

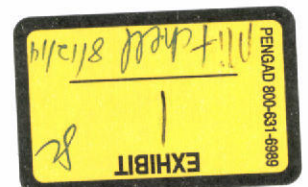
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS )  
 )  
 )  
VS. ) NO. 12-CV-128  
 ) (DST, RMC, RLW)  
 )  
ERIC H. HOLDER, JR., )  
In his official )  
Capacity as Attorney )  
General of the United )  
States, ET AL )

ORAL DEPOSITION OF MAJOR FORREST MITCHELL

ANSWERS AND DEPOSITION OF MAJOR FORREST MITCHELL, a witness called by the United States taken before Janalyn Reeves, Certified Shorthand Reporter for the State of Texas, on the 15th day of June, 2012, between the hours of 9:30 a.m. and 5:46 p.m., in the offices the United States Department of Justice, 816 Congress Street, Suite 1000, Austin, Texas, pursuant to the agreement of counsel for the respective parties as hereinafter set forth.



A P P E A R A N C E S

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Major Forrest Mitchell

June 15, 2012

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MAJOR FORREST MITCHELL,  
having being first duly sworn, testified as follows:

EXAMINATION

BY MR. GEAR:

Q. This is the deposition of Major Forrest Mitchell  
in the matter of Texas V Holder, US DC for DC docket No.  
1:11 CV 128. Good morning, Major Mitchell.

A. Good morning.

Q. Could you state your name and spell your name for  
the record?

A. My name is Forrest Mitchell, F-O-R-R-E-S-T,  
M-I-T-C-H-E-L-L.

Q. My name is Bruce Gear. I'm with the Department  
of Justice. I represent Eric Holder who is the United  
States Attorney General. And could everybody else  
introduce themselves?

MR. SWEETEN: Patrick Sweeten with the Texas  
Attorney General's office on the behalf of the State of  
Texas and on behalf of the witness, Forrest Mitchell.

MR. BRISSENDEN: Reynolds Brissenden for the  
State of Texas and the witness.

MR. ROSENBERG: Ezra Rosenberg from  
Dechert LLP representing the Legislative Conference of  
NAACP branches and the Mexican American legislative  
caucus.

1 MR. WILLIAMSON: Victor Williamson from the  
2 US Department of Justice.

3 BY MR. GEAR:

4 Q. Now, you've been sworn in under oath. You  
5 understand that you've been sworn in?

6 A. Yes, sir.

7 Q. That you are under oath. That you're here today  
8 to provide testimony and that you're expected to testify  
9 completely and as fully as possible. You understand  
10 that?

11 A. Yes, sir, I do.

12 Q. Okay. So I just want to start off with a couple  
13 of ground rules so that we understand exactly what we're  
14 doing. I'm going to be asking you questions. You're  
15 going to be providing the answers and so it's very  
16 important that during the course of the deposition you  
17 allow me to get out my question and then I will allow  
18 you to get out your answer completely and fully. And at  
19 anytime during this deposition if you believe you recall  
20 something or you stated something in accurately, let me  
21 know and I'll allow do you correct that on the record.  
22 Do you understand?

23 A. Yes, sir.

24 Q. Okay. You know, so it's important that you allow  
25 me to finish my questions and I'll allow you to finish

1 your answers. It's important to answer verbally because  
2 a nonverbal answer is hard to catch on a record and the  
3 court reporter needs to hear your response. Do you  
4 understand that?

5 A. Yes, sir.

6 Q. Okay. So -- which may happen during this  
7 deposition if I ask you a question you don't understand,  
8 then, you know, don't hesitate to ask me to repeat it or  
9 don't hesitate to ask me to try to restate it so that  
10 you can understand it. This is my opportunity to  
11 understand what you know. So I'm going to be asking a  
12 lot of questions, none of them are intended to be  
13 personal. It's intended to get to exactly that, what do  
14 you know. Do you understand that?

15 A. Yes, sir.

16 Q. All right. Is there any reason you think you may  
17 not be able to answer completely and truthfully today?

18 A. No, sir.

19 Q. Are you taking any type of drugs or medication  
20 that may affect your ability to understand the questions  
21 that I ask or provide answers today?

22 A. No, sir.

23 Q. At any point during this deposition, if you would  
24 like to take a break, just what I would ask you to do is  
25 work through the question that's before you, complete

1 that, let me know that you need to take a break and then  
2 I'll allow you do to that. Is that understandable?

3 A. Yes, sir.

4 Q. Okay. And what may happen during the course of  
5 this deposition, there may be objections, there may be  
6 discussions between the attorneys. I just ask that if  
7 there's a question before you that you answer that  
8 question unless you're directed otherwise by your  
9 attorney. Do you understand that?

10 A. Yes, sir.

11 Q. Okay. Now, during the course of this deposition,  
12 we're going to be talking about voter ID, photo ID. And  
13 I would ask that you consider those terms  
14 interchangeably throughout this deposition. I want you  
15 to interpret those terms broadly, to mean that the  
16 requirement that a voter present a form of  
17 identification, whether it has a photo or otherwise,  
18 when voting in person before being permitted to vote  
19 with a regular ballot. Do you understand that?

20 A. Yes, sir.

21 Q. If I refer to you, I'm asking you a question  
22 about you as a member of the special investigations unit  
23 of the law enforcement division of the office of the  
24 Texas Attorney General's office. Do you understand  
25 that?



1 A. Yes, sir.

2 Q. Okay. If I refer to you, I'm also including any  
3 staff that you may supervise, but before your attorney  
4 objects to this because we've gone down this road  
5 before, I am going to do my best during the course of  
6 this deposition to identify when I'm referring to you in  
7 your capacity in the special investigations unit or when  
8 I'm broadening that definition to include others that  
9 may be underneath you or within your office. Do you  
10 understand that?

11 A. Yes, sir.

12 Q. Okay. If I say the Texas Attorney General, I  
13 mean the Attorney General Greg Abbott. Do you  
14 understand that?

15 A. Yes, sir.

16 Q. All right. And we may, as we get into this  
17 deposition, we may be talking about the special  
18 investigations unit or the office of the attorney  
19 general I may use those interchangeably. So would you  
20 mind if I use the term SIU for the special  
21 investigations unit at times and would you understand  
22 that?

23 A. That would be fine, sir. Yes, I will.

24 Q. Okay. So do you understand everything that we've  
25 talked about so far?

1 A. Yes, sir, I do.

2 Q. All right. And are you represented by counsel  
3 today?

4 A. Yes, sir.

5 Q. And who is your counsel?

6 A. Patrick Sweeny and -- I'm sorry.

7 MR. BRISSENDEN: Reynolds.

8 A. Reynolds.

9 Q. Have you ever been deposed before?

10 A. No, sir. This is the first time.

11 Q. Have you ever provided testimony at trial?

12 A. Yes, sir.

13 Q. And I know you're an investigator and you  
14 probably have provided quite a bit of testimony. But  
15 generally, talk to me and tell me about what type of  
16 testimony you provided in the past?

17 A. Well, for the first year -- first eight years  
18 with the Texas Attorney General's office I worked in the  
19 prosecutor assistance division. And one of my charges  
20 was to investigate capital murder cases which occurred  
21 in the State of Texas. And so I would testify about my  
22 investigative work on those kinds of cases.

23 Q. And those dealt specifically with capital murder  
24 cases?

25 A. Yes, sir. During that time I also worked other

1 types of cases including public integrity cases, fraud  
2 cases, other index crimes and I would testify in  
3 criminal proceedings about whatever investigative work  
4 that I had done on those cases.

5 Q. And you said, "during your first eight years"?

6 A. Correct.

7 Q. How long have you been with the office of the  
8 attorney general?

9 A. In September I will have been there 15 years.

10 Q. 15 years. Okay. So after your first eight  
11 years, where did you go?

12 A. I became the lieutenant of the special  
13 investigations unit.

14 Q. And that was what time period?

15 A. In 2005.

16 Q. And the title you just told me you became the?

17 A. I became the lieutenant.

18 Q. Lieutenant. And was that the lead investigator?

19 A. No. It was a supervisory position.

20 Q. Supervisor. Okay. So let's focus on 2005. We  
21 were still talking about the types of testimony you may  
22 have provided. So from 2005 forward, have you been  
23 involved in trials where you provided testimony under  
24 oath?

25 A. I haven't really testified much up until 2010.

1 Q. 2010. Okay. And in 2010 can you tell me a  
2 little bit about that testimony?

3 A. Yes, sir. I was one of the investigators who  
4 assisted on the YFZ case, which occurred out in  
5 Schleicher County.

6 Q. YFZ?

7 A. YFZ.

8 Q. Is that short for something else?

9 A. Yearning for Zion.

10 Q. Yearning for Zion, okay. And tell me a little  
11 bit about that case?

12 A. That was a case involving men who had married  
13 under age women and had fathered children with those  
14 under age women. And had married multiple women in  
15 Schleicher County.

16 Q. And so as I understand your testimony, that did  
17 not involve election code violations?

18 A. No, sir.

19 Q. Something completely different?

20 A. Yes, sir.

21 Q. Have you testified on any matters that involved  
22 election code violations?

23 A. No, sir.

24 Q. So other than the YFZ in 2010, have you provided  
25 any other testimony at trial, 2005 forward?

1           A. There was one other case that I testified in, but  
2           it was in a suppression hearing.

3           Q. And when you say suppression hearing, what do you  
4           mean?

5           A. It was a suppression hearing on a search warrant  
6           that was run.

7           Q. And did that have anything to do with election  
8           code violations?

9           A. No, sir.

10          Q. And for the record, what was the issue on the  
11          suppression hearing?

12          A. The scope of the search warrant and items seized.

13          Q. And you had to appear in court and provide  
14          testimony?

15          A. Yes, sir.

16          Q. And about what time period was that?

17          A. I would say it's -- it was either 2006 or 2007.

18          Q. Okay. And just so I'm clear now, from 2005  
19          forward, I've asked you if you've provided any testimony  
20          regarding election code violations. I believe the  
21          answer has been no?

22          A. That's correct, sir.

23          Q. Okay. All right. And so what did you do to  
24          prepare for the deposition today?

25          A. I reviewed my spread sheets that I prepared.

1 Q. Okay. And were you -- did you review those with  
2 anyone else present?

3 A. I reviewed those with counsel here.

4 Q. Anyone else?

5 A. Huh-uh. Oh, I'm sorry. John McKenzie as well.

6 Q. John McKenzie is also counsel?

7 A. Yes, sir.

8 Q. When did you review the spread sheets?

9 A. Last night and part of last week.

10 Q. Did you have any other material with you while  
11 reviewing the spread sheets?

12 A. Well, yes. Indictments and judgments and  
13 sentences.

14 Q. And did you produce the indictments, judgments  
15 and sentences to your counsel?

16 A. Yes, sir.

17 Q. And when did you produce those?

18 A. I believe last week.

19 Q. And any other material that you reviewed while  
20 looking at the spread sheets?

21 A. Are we talking about preparing or providing  
22 discovery?

23 Q. Well, let's start with preparing for the  
24 deposition.

25 A. No, it was just really the spread sheets.

1 Q. In addition to the indictments, judgments and  
2 statements?

3 A. Yes.

4 Q. Okay. And when you were talking about preparing  
5 or discovery, what were you referencing?

6 A. The discovery order asked for all documents  
7 dealing with voter fraud.

8 Q. Okay. And what did you do in response to the  
9 discovery?

10 A. I reviewed my personal e-mail, my work e-mail and  
11 documents that I had electronically saved on our  
12 network.

13 Q. Did you produce any of those to your attorney?

14 A. Yes, sir.

15 Q. And when did you produce those?

16 A. It's been an ongoing process. I started  
17 producing them early part of last week.

18 MR. GEAR: Patrick, do you know if these  
19 have been produced to us at this point?

20 MR. SWEETEN: I know that we produced  
21 sentences, judgments, indictments, his spread sheet,  
22 everything that was discussed there. And I think what  
23 we've set forth in our objections, whatever we've set  
24 forth in our objections we produced all that.

25 MR. GEAR: Okay. Because I don't actually

1 recall ever seeing any e-mails.

2 MR. SWEETEN: I can check on that at a  
3 break.

4 BY MR. GEAR:

5 Q. So we talked about, and we'll get into that a  
6 little bit later, but we talked about documents that you  
7 reviewed in response to the discovery. Anything else  
8 that you may have reviewed?

9 A. I can't think of anything else right now.

10 Q. Okay.

11 (Exhibit No. 580 was marked.)

12 BY MR. GEAR:

13 Q. I'm showing you what's been marked as  
14 Exhibit 580. I ask you to just take a look at that.

15 MR. SWEETEN: I would note for the record,  
16 that the Attorney General has filed objections and  
17 responses to these.

18 BY MR. GEAR:

19 Q. Just let me know when you've had a chance to look  
20 at it.

21 A. Yes, sir. Okay, sir.

22 Q. All right. I turn your attention to what I  
23 believe is Page 3, they're unnumbered, but it starts  
24 with documents. Do you see that?

25 A. Yes, sir.



1 Q. Okay. And have you reviewed this before, this  
2 document?

3 A. I do not believe I've seen the one for June 15th.

4 Q. All right. You saw an earlier version?

5 A. Yes, sir.

6 Q. And you reviewed the earlier version?

7 A. Yes, sir.

8 Q. Would you say that this is substantially similar  
9 but for the date, June 15th?

10 A. Yes, sir, it looks similar.

11 Q. Okay. So directing your attention to paragraph 1  
12 under documents, it indicates all documents and  
13 communications including but not limited to those among  
14 and between the office of the Texas Attorney General.  
15 And I goes on to say more. Do you see that paragraph  
16 that I'm referring to?

17 A. Yes, sir.

18 Q. What, if anything, did you do to respond to  
19 paragraph 1?

20 A. Knowing that --

21 MR. SWEETEN: Hold on a minute. When you're  
22 answering the question don't reveal communications that  
23 you've had with attorneys of our office. Okay? So  
24 don't reveal matters of attorney/client privilege. But  
25 you can answer otherwise.

1 BY MR. GEAR:

2 Q. And I'm not asking you to reveal communications  
3 at this point. I'm just asking you what, if anything,  
4 you or anyone else in your office did to determine if  
5 there were responsive documents to paragraph 1?

6 A. Reviewed my saved files to see if I had anything  
7 responsive to SB 14.

8 Q. Did you have any documents that were responsive  
9 to paragraph 1, communications including but not limited  
10 to the office of the Secretary of State, division of  
11 elections, members of the Texas Legislature?

12 A. Yes, sir. I mean, I didn't have anything  
13 responsive to that.

14 MR. SWEETEN: Bruce, let me just tell you  
15 I've gotten an e-mail from counsel. You asked about, I  
16 think there was one remaining document or type of  
17 documents you asked about, which was e-mails. I just  
18 got an e-mail that indicated that was uploaded last  
19 night. So we have produced some e-mails to you from  
20 Mitchell and then all the other areas that we talked  
21 about have been provided.

22 MR. GEAR: Do you know about what time they  
23 were uploaded?

24 MR. SWEETEN: I don't have that. The  
25 attorney was communicating with us in another one of

1 these depositions. And so he just indicated it was  
2 produced to us last night. I don't have the time.

3 MR. GEAR: Okay.

4 BY MR. GEAR:

5 Q. All right. And so I believe your response was  
6 that you did not have documents responsive to paragraph  
7 No. 1 when it came to communications between the  
8 attorney general's office, Secretary of State's office;  
9 is that correct?

10 A. Yes, sir.

11 Q. And you also indicated that you did not have  
12 documents responsive to the members of the Texas  
13 legislature; is that correct?

14 MR. SWEETEN: I'm sorry.

15 BY MR. GEAR:

16 Q. Paragraph 1; is that correct?

17 A. No, sir, I don't have any responsive documents to  
18 that.

19 MR. SWEETEN: Bruce, I think it's fair to  
20 show him his responses when you're going through these.  
21 We formally responded to this and I think it would be  
22 helpful to him and I think it would make this go faster  
23 if you provide him a copy of how we responded because we  
24 have listed some documents.

25 BY MR. GEAR:

1 Q. Did you prepare any written response to this  
2 notice of deposition?

3 A. I think I prepared an e-mail that said, yes, no,  
4 yes, no, yes, no.

5 MR. SWEETEN: Don't reveal the subject of  
6 any e-mails you sent to me or John or Mr. Bruce. Okay?

7 BY MR. GEAR:

8 Q. Did your assistant prepare any written  
9 communication or document to the Department of Justice?

10 A. No.

11 (Exhibit No. 581 was marked.)

12 BY MR. GEAR:

13 Q. I'm showing you what's been marked as  
14 Exhibit 581. I'll give you a chance to look at that.

15 A. Okay.

16 Q. Have you seen Exhibit 581 before?

17 A. No, sir.

18 Q. Did you assist in preparing Exhibit 581?

19 MR. SWEETEN: Do you mean the actual  
20 drafting? He's not going to talk about communications  
21 we've had regarding documents. So he's not going to  
22 answer substantive communications you've had. If you're  
23 asking about the drafting, I'll let him answer questions  
24 as posed.

25 BY MR. GEAR:

1 Q. You indicated that you sent an e-mail saying yes,  
2 no, yes, no in response to the notice of depositions and  
3 I don't want do you get into privileged communication  
4 with your counsel. But was that e-mail sent to your  
5 counsel?

6 A. Yes, sir.

7 Q. And when was that e-mail sent?

8 A. Sometime last week.

9 Q. And who was it sent to?

10 A. John McKenzie.

11 Q. Turning your attention to Page 2, last full  
12 paragraph where it indicates, "Mr. Mitchell will produce  
13 the -- to the Department of Justice convictions and  
14 indictments for voter fraud for the time period  
15 identified in Exhibit A to Mr. Mitchell's notice by  
16 6:00 p.m. on June 3, 2012." It also goes on to say  
17 that, "Mr. Mitchell will produce another spread sheet,  
18 redacted of personal identifying information, for the  
19 309 voter fraud investigations that he maintains in the  
20 ordinary course of duties." Do you see that?

21 A. Yes, sir.

22 Q. It also indicates that, "we continue to assert  
23 our objections as to the production of over 10,000 pages  
24 of largely irrelevant documents and maintain our belief  
25 that a request calling for such as production far

1 exceeds the scope of discovery." Do you see that?

2 A. Yes, sir.

3 Q. Now, when you talk about "10,000 pages of  
4 irrelevant documents," can you give me an idea of what  
5 you're actually referring to?

6 A. Case files.

7 Q. And those are case files that regard the spread  
8 sheets that you've provided to the defendant, Eric  
9 Holder, in this case?

10 A. Yes, sir.

11 Q. And those case files include conviction records,  
12 if any?

13 A. Correct.

14 Q. They include testimony, if any?

15 A. I do not believe the case files would include  
16 testimony.

17 Q. Okay. Why don't we do it this way. Generally  
18 what would the case files include?

19 A. The case file would generally contain a referral  
20 document from an outside agency.

21 Q. Okay.

22 A. Such as the Secretary of State's office, a local  
23 district attorney's office or county attorney's office.

24 Q. Which would initiate the action in the attorney  
25 general's office?

1 A. Correct.

2 Q. Okay. What else would it include?

3 A. It also could include affidavits from  
4 complainants --

5 Q. Okay.

6 A. Who forwarded that information to whatever  
7 referral agency. It may contain documents such as voter  
8 registration records or mail-in ballot applications or  
9 poll place combination forms.

10 Q. And those documents would have come from the?

11 A. Referring agency.

12 Q. Referring agency. Okay. Anything else that  
13 would be in the files, generally?

14 A. In the entire case file would be investigative  
15 work product, such as interviews of witnesses.

16 Q. Notes?

17 A. Notes. Suspect interviews, audio recordings,  
18 personal identifying information of witnesses or  
19 suspects contacted, additional election records  
20 obtained. And each one will generally contain an open  
21 case form and a closed case form, along with any sorts  
22 of court pleadings such as, indictments or information  
23 or the final disposition of the case.

24 Q. Okay. And do you agree with what's stated here  
25 that these would be irrelevant; in particular,

1 irrelevant to understanding your spread sheet?

2 MR. SWEETEN: That's communication that we  
3 provided to you on behalf of the witness. He's not  
4 going to comment on what he thinks of the words on the  
5 page.

6 MR. GEAR: Well, I'm asking you --

7 MR. SWEETEN: That's a legal term.  
8 "Relevance" is a legal term. We're his legal counsel.  
9 We represent Mr. -- Major Mitchell. And we provided to  
10 you what our belief is and his position is. That  
11 continues to be his position for you to ask him to  
12 characterize our legal interpretation of his words would  
13 invade the attorney/client privilege and frankly, is  
14 irrelevant. We're representing him in this case. So I  
15 object to the question.

16 BY MR. GEAR:

17 Q. You can answer.

18 A. Can you repeat that, sir.

19 Q. Can you read back?

20 (Requested question was read.)

21 MR. SWEETEN: Objection; calls for a legal  
22 conclusion. Objection; relevance. You can go ahead and  
23 answer.

24 A. There are many documents in these case files that  
25 don't deal with SB 14 at all.



1 Q. But they deal with the issue of -- in this case  
2 referring to your spread sheet, which we'll get to  
3 later, refer to the issue of voter fraud?

4 A. In the broad sense, yes.

5 Q. Well, they're from the referring agency, correct?

6 A. Correct.

7 Q. And they're regarding election code violations?

8 A. Correct.

9 Q. And in that, when you say, "the broad sense,"  
10 they're referring to election code violations referred  
11 from a particular agency?

12 A. Correct.

13 Q. To the attorney general's office?

14 A. Yes, sir.

15 Q. And did you complete your answer? I'm sorry.

16 A. I apologize.

17 Q. You were answering and I interrupted you, I  
18 think. So were you able to complete your answer on  
19 that?

20 A. The large volume of documents deals with all of  
21 the election code referrals that this office has  
22 received over the years.

23 Q. Okay. And am I understanding correctly that  
24 there's also an off-site location where files are  
25 maintained?

1 A. Multiple.

2 Q. Okay. And did you search those off-site  
3 locations in response to the notice of deposition?

4 A. Electronically.

5 Q. So they are both electronic files and paper  
6 files. Is that your testimony?

7 A. Yes, sir. If I could clarify?

8 Q. Sure, please.

9 A. We have a case management system and what we did  
10 was try to determine the location of the closed case  
11 files, all of the election code case files which are  
12 maintained off-site.

13 Q. So it's the closed case files that are maintained  
14 off-site?

15 A. Yes, sir. If I could clarify that as well?

16 Q. Please.

17 A. Due to the large volume of documents, some open  
18 case files require that we store them off-site as well.

19 Q. So they're both open and closed files? And would  
20 all those -- would the information in those files be  
21 maintained both by paper and electronically?

22 A. Only a small portion is maintained  
23 electronically.

24 Q. Okay. And so my original question was, did you  
25 search those files in response to the notice of

1 deposition, you indicated electronically, correct?

2 A. Correct.

3 Q. So am I -- is it fair to say that you did not  
4 search the paper files to determine if there were any  
5 responsive documents?

6 A. I did not search paper files.

7 Q. Okay. And I want to be clear on this when I'm  
8 saying "you," I mean you or anyone else within your  
9 office?

10 A. Correct.

11 (Exhibit No. 582 was marked.)

12 BY MR. GEAR:

13 Q. Okay. I'm showing you what's been marked as  
14 Exhibit 582. I'll give you a chance to take a look at  
15 that. Have you had a chance to look at Exhibit 582?

16 A. Yes, sir.

17 Q. And have you seen that exhibit before?

18 A. Yes, sir.

19 Q. Did you assist in preparing the answers on  
20 Exhibit 582?

21 A. Can you explain, "prepare"?

22 Q. Did you provide any input on Exhibit 582?

23 MR. SWEETEN: Don't reveal anything you said  
24 to us, not one word. You can just say if you've had any  
25 effort in drafting that or not and this's all -- that's

1 all we're going to give them.

2 A. I did not provide any effort in drafting this  
3 document.

4 Q. (By Mr. Gear) Okay. And that -- okay. Your  
5 counsel referred to a document that would provide a  
6 clearer understanding of what you did to respond to the  
7 notice of deposition. Would that be the document  
8 that --

9 MR. SWEETEN: Feel free to review the  
10 document to the extent you need to.

11 BY MR. GEAR:

12 Q. I mean, if your testimony is that you didn't  
13 provide any assistance or input into the drafting of  
14 that particular document, I understand that and we can  
15 move on. Is that your testimony?

16 MR. SWEETEN: No. What I said earlier is I  
17 think it would be fair if you're going to ask him about  
18 the categories of documents that you show him the  
19 official responses that we submitted to you a week ago.  
20 And so he's -- now that he has that in front of him, I'm  
21 going to advise him to review it to the extent he needs  
22 to in order to answer your question.

23 A. I apologize, again. Can you restate your  
24 question one more time?

25 Q. Well, let me actually ask you a different

1 question. Did you search open files as you've testified  
2 to in response to the notice of deposition?

3 A. No, I did not.

4 Q. So I'm trying to understand where files are  
5 maintained in your office. I understand there's an  
6 off-site location that contains both open and closed  
7 files. In your -- in your physical office where you  
8 work on a day-to-day basis, can you describe to me the  
9 file system there?

10 A. Investigators who work in the special  
11 investigations unit will have a case file at their  
12 actual desk.

13 Q. And is that paper, is that electronic or both?

14 A. It would be predominantly a paper file. There  
15 will also be an electronic report that is maintained  
16 through our report writing system.

17 Q. And so in addition to the paper file on your  
18 desk, you would have a computer, is my understanding?

19 A. Yes.

20 Q. Okay. Where your electronic files would be  
21 maintained?

22 A. Yes, sir.

23 Q. And when I asked you, did you search the open  
24 files, let me include that to the -- the question to ask  
25 you, did you search the paper files that you maintain in

1 your office?

2 A. Yes, sir.

3 Q. And those would be open files, closed files or  
4 both?

5 A. Both.

6 Q. And I believe you also testified that you  
7 searched your electronic files?

8 A. Yes, sir.

9 Q. And would those contain the open files?

10 A. And when I say "open," it could be a case that  
11 has not been finally adjudicated so it could include  
12 that, yes.

13 Q. Could "open" mean anything else because I would  
14 like to understand what you mean by open?

15 A. We consider a case still open if it's still  
16 pending trial and there's not been a final disposition  
17 in the case. And so electronically I would look for  
18 indictments, for instance.

19 Q. Is there a record retention policy in your  
20 office?

21 A. I believe so, yes.

22 Q. Do you know what that is?

23 A. Well, it depends on the category of file.

24 Q. Well, when we're talking about election code  
25 violations, are we talking about -- are we always

1 talking about a criminal investigation?

2 A. Yes, sir.

3 Q. So in terms of criminal investigations, is there  
4 a retention policy in your office?

5 A. Yes.

6 MR. SWEETEN: Are you asking about SIU or  
7 are you asking about the office of the Attorney General?

8 MR. GEAR: And that's a good point.

9 BY MR. GEAR:

10 Q. So let's talk about the SIU first. Is there a  
11 specific retention policy for criminal investigations,  
12 the files in your office?

13 A. Our policy is that once the case is closed and  
14 adjudicated or closed unfounded, that the files are  
15 given to our records manager.

16 Q. And who is your records manager?

17 A. For SIU the records manager would be Sherry  
18 Patke.

19 Q. Can you spell the last name for me?

20 A. P-A-T-K-E.

21 Q. And once they've reached the final adjudication,  
22 I believe that's how you stated it, what would Sherry do  
23 with the files?

24 A. Sherry would update our mainframe system and then  
25 prepare the files for storage.

1 Q. And when you talk about updating the mainframe  
2 system, what do you mean by that?

3 A. Each of our cases is -- each case is assigned a  
4 case number through our OAG mainframe. And each case  
5 has a status, open/closed. And so upon receiving the  
6 file, she will update the mainframe to indicate the case  
7 is closed.

8 Q. Okay. And so when we're talking about a file, do  
9 those files include e-mail communications?

10 A. Only if that e-mail was printed by the  
11 investigator.

12 Q. Do they include correspondence?

13 A. Yes.

14 Q. I believe you testified that they would include  
15 the investigator's notes?

16 A. Yes.

17 Q. Would they include any other type of analysis or  
18 report?

19 A. They would include a narrative report of the  
20 investigation.

21 Q. Generally, any other documents that you would  
22 find in one of these files?

23 A. These files contain lots of documentary items.

24 Q. Okay. So once there's a final adjudication, you  
25 indicated Sherry would upload it to the mainframe --



1 update it to the mainframe. And then would they be sent  
2 to the off-site location?

3 A. Just the status is updated in mainframe.

4 Q. Okay.

5 A. All the documentary files are placed in a box or  
6 boxes. And prepared for long-term storage.

7 Q. And long-term storage is as we talked about at  
8 off-site locations?

9 A. We keep them in our division for a short period  
10 of time.

11 Q. Is there a determination that certain time period  
12 that you keep them there?

13 A. I don't really know what that is.

14 Q. And after that short period of time what happens?

15 A. They're sent to, I believe a warehouse.

16 Q. And so you indicated there were multiple  
17 locations. Can you tell me how many different locations  
18 there are off-site?

19 A. I do not know how many warehouses we have for the  
20 State records system.

21 Q. Okay.

22 A. We do have a couple of cases that have large  
23 volumes of documentary evidence or records. And we have  
24 those stored in off-site location. That would be just  
25 one location.

1 Q. And what's the name of that location, if you  
2 know?

3 A. I don't really know the name of it.

4 Q. Is it here in Austin?

5 A. Yes, sir, it is.

6 Q. Okay. Let me change the subject for a minute and  
7 talk about your background. Could you tell me what your  
8 educational background is?

9 A. I graduated from Southwest Texas State University  
10 in 1997 with a bachelor's degree in criminal justice and  
11 a minor in sociology. And then I have attended graduate  
12 level courses at the University of Virginia at the FBI  
13 academy and then also through Sam Houston State  
14 University in Huntsville Texas for the leadership  
15 command college.

16 Q. So the graduate level courses, what was the  
17 subject matter of the study?

18 A. I attended the 233rd FBI national academy in  
19 Quantico, VA in 2008. And while you're attending the  
20 academy, you can take graduate level classes through  
21 University of Virginia. I took courses in  
22 organizational communication. I took courses in  
23 intelligence, in law enforcement, organizational change,  
24 ethics and integrity in law enforcement and forensics  
25 for supervisor?

1 Q. Okay. So as I understand your testimony, you  
2 have an undergraduate degree in criminal justice?

3 A. Yes, sir.

4 Q. And do you currently hold a master's in any  
5 field?

6 A. No, sir.

7 Q. Okay. Any other education generally?

8 A. Well, yes, sir. I attended basic peace officer  
9 academy in 1993 through the San Antonio College in  
10 San Antonio, Texas. And then over the course of my  
11 20 years of public service, I have taken many  
12 investigative courses.

13 Q. Continuing education?

14 A. Yes, sir.

15 Q. I understand that. So you do not hold a law  
16 license, correct?

17 A. No, sir, I do not.

18 Q. Are there any privileges that you're asserting  
19 today?

20 MR. SWEETEN: I'll assert the privileges as  
21 they may come up. It depends on what you ask him. If  
22 you ask him about his doctor/patient relationship, we'll  
23 assert the privilege there. With respect to -- he's  
24 going to assert as to any attorney/client privilege.  
25 There also may be occasion wherein the event it comes

1 up, the law investigatory privilege. And that's a  
2 privilege that would -- if in the event he were asked to  
3 reveal a law enforcement investigatory technique, that  
4 we would assert as to that. Otherwise, it will depend  
5 on the questions that are asked. Thus far, he hasn't  
6 asserted any privilege other than the discussions he's  
7 had with us.

8 BY MR. GEAR:

9 Q. I promise you I won't ask you about your  
10 doctor/client privilege?

11 MR. SWEETEN: That was sort of in gest.

12 MR. GEAR: I know.

13 BY MR. GEAR:

14 Q. Are you a member of any organizations?

15 A. Currently I'm a member of the FBI national  
16 academy graduate.

17 Q. Anything else?

18 A. No, sir.

19 Q. Have you ever heard of the Austin Area Chapter  
20 Association of Certified Fraud Examiners?

21 A. Yes, sir, I have.

22 Q. Is that an organization with a membership?

23 A. Yes, sir.

24 Q. Are you a member of that organization?

25 A. No, sir.

1 Q. Have you ever presented for that organization,  
2 provided any speeches, information related to what you  
3 do in the office of the Attorney General?

4 A. Yes, sir.

5 Q. Okay. Do you know how often you do presentations  
6 in front of this organization?

7 A. I believe I've done two presentations for the  
8 Austin chapter.

9 Q. And do you recall when those presentations were?

10 A. They were a few years ago.

11 Q. General time period?

12 A. I would say between 2006 and maybe 2010.

13 Q. And you indicated that that particular  
14 organization, The Association of Certified Fraud  
15 Examiners, has a membership?

16 A. Yes, sir.

17 Q. Okay. And have you ever been a member?

18 A. I don't believe -- no, I have not.

19 Q. All right. Any other -- let's talk a little bit  
20 about your work experience. So you indicated that  
21 you're currently with the SIU division. Can we walk  
22 that back a little bit and tell me about your work  
23 experience?

24 A. Well, if I could clarify, I now also supervise  
25 the fugitive apprehension unit or the sex apprehension

1 unit as well. Those are the two units that I'm  
2 responsible for supervising, SIU and the fugitive  
3 apprehension unit.

4 Q. And just briefly, for the fugitive apprehension  
5 unit, when did you become a supervisor?

6 A. May 1st.

7 Q. Does that have anything to do with election code  
8 violations?

9 A. No, sir.

10 Q. Okay. So turning your attention back to the SIU,  
11 when did you become a supervisor there?

12 A. In 2005.

13 Q. And prior to 2005, were you in the office of the  
14 Attorney General?

15 A. Yes, I was.

16 Q. And can you tell me a little bit about what you  
17 did prior to 2005?

18 A. I was hired with the Texas Attorney General's  
19 office the Fall of 1997. I was an investigator assigned  
20 to the prosecutor assistance division in special  
21 investigations for -- I'm sorry. From 1997 to 2003, I  
22 worked in that division. As I stated previously, a good  
23 portion of that was working on capital murder  
24 investigations throughout the state. We also did other  
25 types of investigations at the request of local district

1 county attorneys. These could be any kind of case from  
2 an aggravated robbery to a public integrity  
3 investigation.

4 Q. When you say, "public integrity," what are you  
5 referring to?

6 A. This -- a typical case would involve a local  
7 official who could be in law enforcement or an elected  
8 official or an appointed official who engages in any  
9 kind of criminal misconduct associated with their office  
10 or while in office.

11 Q. So you were with -- you were with this particular  
12 division from 1997 to 2003, correct?

13 A. With an exception of about two and a half weeks.  
14 I left the office of the Attorney General and went to  
15 the Texas Department of Insurance for about two and a  
16 half weeks.

17 Q. And the Texas Department of Insurance has nothing  
18 to do with election code violations?

19 A. That's correct.

20 Q. All right. And so let's just focus on the 1997  
21 to 2003.

22 A. Okay.

23 Q. Did you -- did you ever have an occasion during  
24 that time period to work on election code violation  
25 referrals, allegations?

1 A. One.

2 Q. One. Can you tell me about that?

3 A. There was -- and I can't give you the date. But  
4 it was when I came on as a new investigator, there was  
5 an allegation of election misconduct in the handling of  
6 ballot boxes in Liberty County.

7 Q. Do you recall who was the alleged wrong doer in  
8 that case?

9 A. No, sir, I don't.

10 Q. Do you recall any specifics about the  
11 investigation?

12 A. No, sir. By the time I got the case the statute  
13 of limitations expired.

14 Q. And the overall allegation was, could you say  
15 that again?

16 A. I believe the handling of the ballot boxes.

17 Q. Was that misconduct by an official?

18 A. I don't remember.

19 Q. Is it fair to say that -- that the one case that  
20 you dealt with between 1997 and 2003 did not deal with  
21 voter impersonation?

22 A. Yes, sir, that's fair.

23 Q. So between 2003 to 2005, what responsibilities  
24 did you have within the attorney general's office?

25 A. I was assigned as a long-term case investigator.



1 Q. And tell me what the responsibilities are and  
2 what division you were in?

3 A. In 2003, all of the investigators with the office  
4 of the Attorney General merged into the criminal  
5 investigations division. Previously we had been  
6 assigned to specific divisions that handled specific  
7 types of cases. The prosecutor assistance division did  
8 any type of case that a local district or county  
9 attorney needed assistance on or had been recused in.  
10 And so again, I could work any type of case. And there  
11 were other divisions that had like financial crimes,  
12 they had investigators as well. And the cyber crimes  
13 was another particular unit. In 2003 all of the  
14 investigators were merged into one division focusing the  
15 same in units of specialization.

16 Q. Okay. So I think I understand that. So between  
17 2003 and 2005, did you ever have an occasion to work on  
18 an election code violation case?

19 A. In mid-2005 I did when I became the lieutenant.

20 Q. And when you say, "when you became the  
21 lieutenant," were you part of the SIU at this time?

22 A. Yes, sir.

23 Q. So between 2003, 2005 until you became the  
24 lieutenant in the SIU, you did not work on any election  
25 code violation cases?

1 A. That's correct.

2 Q. Okay. So let's move forward then, regarding --  
3 actually, I would like to back up. I'm sorry. You were  
4 talking about the records that are maintained in your  
5 office. Do the electronic records contain scans of  
6 every hard copy document in storage?

7 A. No, sir.

8 Q. They do not. Moving forward to 2003 when you  
9 became the lieutenant in the SIU, how did you become the  
10 lieutenant for that particular position?

11 A. I believe we submitted our names for  
12 consideration and the supervisor of the division  
13 reviewed memos and our personnel files and then made a  
14 selection.

15 Q. And who did you submit your -- did you say letter  
16 of recommendation? I'm sorry.

17 A. I'm sorry. We submitted our names for  
18 consideration and we submitted those to David Boatright.

19 Q. David Boatright. And who is David Boatright?

20 A. He was the division chief at the time and was  
21 later my Major.

22 Q. And he was the division chief for the SIU?

23 A. For the entire criminal investigations division.

24 Q. And obviously you were selected?

25 A. Yes, sir.

1 Q. So when you were selected, was that automatically  
2 a supervisory position?

3 A. Yes, sir.

4 Q. And I believe you said you held the rank of  
5 lieutenant?

6 A. Yes, sir. If I could clarify?

7 Q. Please.

8 A. It was an investigator supervisor. Because we're  
9 so small, I still had to work some cases.

10 Q. So in 2005 you became the investigative  
11 supervisor. Can you tell me how many people you  
12 supervised, if any?

13 A. I think it was a small group of maybe -- it  
14 varied over the years. But anywhere between 8 and 12.

15 Q. And we're talking about 2005 at this point?

16 A. Yes, sir.

17 Q. Between 8 and 12. Can you tell me generally what  
18 the responsibility of the -- were they all  
19 investigators?

20 A. Yes, sir.

21 Q. Of the investigators you supervised, what was  
22 their responsibility?

23 A. What was their responsibility or mine?

24 Q. What was their responsibility?

25 A. To conduct investigations that were referred to

1       our office.

2           Q. And am I accurate to say that the SIU does not  
3       only deal with election code violations, it deals with a  
4       broad variety of different violations?

5           A. That would be accurate. We deal with a wide  
6       variety of criminal investigations.

7           Q. And generally, can you tell me the types of  
8       investigations that the SIU deals with?

9           A. Public integrity, election violations, white  
10      color crimes such as fraud. And are you talking 2005 or  
11      all the way to present, now?

12          Q. Let's start off in 2005, just so we're clear.  
13      When you started off in 2005, what was the  
14      responsibility of the SIU?

15          A. I would say fraud, election fraud, public  
16      integrity and whatever type of case needed additional  
17      investigative assistance. An example, around that time  
18      there were many death penalty cases that were under  
19      review for consideration of mental retardation. So some  
20      of our investigators had to go back and examine those  
21      cases to determine whether or not there was evidence of  
22      mental retardation.

23          Q. Okay. So you started off as a lieutenant. Can  
24      you tell me how -- the time periods of which you gained  
25      your promotion to a different rank?

1 A. I was promoted to captain of the special  
2 investigations unit in, I believe the Fall of 2007.

3 Q. And you just recently became a major?

4 A. Yes, sir.

5 Q. In 2012?

6 A. Yes, sir.

7 Q. And I believe, off the record you said May of  
8 2012?

9 A. Yes, sir, May of 2012.

10 Q. Now, does the increase in rank does that give you  
11 any additional responsibility?

12 A. Yes, sir.

13 Q. It does. Okay. So as a lieutenant in the SIU,  
14 can you tell me what your identified responsibilities  
15 were?

16 A. Was to supervise the daily and weekly  
17 investigative activity of the investigators in my unit.  
18 That would include reviewing case reports, and providing  
19 them assistance or guidance as needed. In many cases, I  
20 would also actually accompany the investigators out into  
21 the field if they needed additional manpower.

22 Q. Would you sign off on the case reports? Was that  
23 part of your responsibility?

24 A. Either I would or my captain at the time.

25 Q. Who was your captain at the time?

1 A. In 2005 it would be Greg Lucas.

2 Q. Is he still there with you now?

3 A. Yes.

4 Q. Still a captain?

5 A. Yes. He is not a part of the special  
6 investigations unit, however.

7 Q. From 2005 to the present, has the size of the  
8 investigators underneath you changed?

9 A. Substantially.

10 Q. Okay. And so I understand in 2005 there were  
11 between 10 to 12. Can you tell me how the growth has  
12 occurred within your office?

13 A. Well, I believe it was in 2008, the money  
14 laundering unit was absorbed into the special  
15 investigations unit. And that area of responsibility  
16 was added.

17 Q. How many investigators came along with that?

18 A. I would say about eight or nine.

19 Q. Any other units that have been absorbed into the  
20 SIU?

21 A. Also the -- what we call the criminal litigation  
22 unit, which would be the group of investigators who  
23 assist prosecutors in the prosecution of cases. That's  
24 about six.

25 Q. About six. Any other units?

1           A. I have a group that is assigned to the joint  
2 terrorism task force. And that has a ranged between two  
3 and three employees.

4           Q. So is that it? Are there any other units?

5           A. Well, in May of 2012, I also was added to the --  
6 the fugitive apprehension was added to my  
7 responsibility.

8           Q. And they were absorbed into the SIU?

9           A. No, sir, it's a separate group, but it's about 24  
10 or 25 employees.

11          Q. Okay. Do their responsibilities cross over?

12          A. No, sir, they do not.

13          Q. Okay. So if my calculations are correct, there  
14 are approximately 30 investigators underneath you from  
15 the various units that have been absorbed?

16          A. I think it would be a more accurate statement to  
17 say between -- I think there's 40 commissioned state  
18 police officers in special investigations unit and about  
19 24 in the fugitive apprehension unit.

20          Q. So 40 in SIU?

21          A. Correct.

22          Q. And you said "commissioned police officers," what  
23 does that mean?

24          A. Investigators who are commissioned through the  
25 State law enforcement.

1 Q. And they all carry badges?

2 A. Yes, sir.

3 Q. They are police officers?

4 A. Yes, sir.

5 Q. Okay. And you indicated that there was a captain  
6 underneath you. Did you say Greg Russ?

7 A. I'm sorry. His name -- he is not part of my  
8 unit. But he was my captain back in 2003.

9 Q. Okay. Do you have -- I'm trying to understand  
10 the structure. I know you've got 40 commissioned police  
11 officers, investigators that work underneath you and  
12 that you supervise. Is there another structure? Are  
13 there other managers within your unit?

14 A. Yes, sir there are.

15 Q. Okay.

16 A. There are two captains.

17 Q. Two captains.

18 A. One for the special investigations unit and one  
19 for the sex offender apprehension unit, fugitive unit.

20 Q. And the name of the captain that's in the SIU  
21 unit?

22 A. Would be Daniel Guajardo.

23 Q. And Daniel reports directly to you?

24 A. That is correct, sir.

25 Q. What about the other captain?



1           A. He reports to me as well. And his name is Bruce  
2 Cook.

3           Q. Does Bruce Cook's responsibilities cross over  
4 into the SIU unit?

5           A. No, sir.

6           Q. Okay. So as I understand the structure of the  
7 SIU, you are the lead investigator, the supervisor.  
8 There's one captain, Daniel?

9           A. Guajardo.

10          Q. Guajardo. And then there are 40 police officers,  
11 investigators that are underneath you, correct?

12          A. Yes, sir.

13          Q. Okay. And do you have general staff that  
14 assists, supports -- support staff?

15          A. Yes, we do.

16          Q. And generally how large is your support staff?

17          A. I believe we have four auditors.

18          Q. What does that mean, "auditors"?

19          A. These are, in some cases they're CFEs or CPAs who  
20 assist in the investigation that we conduct. They're  
21 noncommissioned personnel.

22          Q. CPA's?

23          A. Certified public accountants.

24          Q. Accountants. They would be assisting with  
25 white-collar crimes?

1 A. Correct.

2 Q. Okay. Do you have any other support staff that  
3 would actually go out into the field? And I'm just  
4 speaking specifically about the election code violations  
5 to assist with investigations?

6 A. No. Civilians wouldn't go in the field.

7 Q. Okay. What are the names of the auditors?

8 A. Kyle Swihart, Roxanne Mendoza, Rebeka Rutland,  
9 Kim Holderread.

10 Q. And would any of the individuals that you just  
11 mentioned, would they be involved in election code  
12 violations?

13 A. The only way they would be involved in election  
14 code violations is if we were conducting an  
15 investigation of campaign finance violations or the  
16 improper use of government monies for political  
17 purposes.

18 Q. Have you had those types of investigations within  
19 your office?

20 A. Yes, sir.

21 Q. All right. And can you tell me how many of those  
22 types of investigations you've conducted within your  
23 office?

24 A. I would -- to give you a firm number I would have  
25 the review my spread sheet. But if I were to hazard a

1 guess it would be half a dozen or so.

2 Q. One more time focusing on your promotion, what is  
3 the process of moving from lieutenant to major? What is  
4 the process that you had to go through for your  
5 promotions?

6 A. We generally prepare a memo involving our core  
7 competencies in the identified areas for the position.  
8 And this could be a two to three page memorandum, along  
9 with a resume. And then there is a board review.

10 Q. Okay. And after each board review, you're told  
11 of the determination, if you've been promoted. Would  
12 that be fair to say?

13 A. Yes, sir. You are scored by the board and then  
14 you're advised of the promotion.

15 Q. Okay. And so you indicated previously that there  
16 are additional responsibilities that are added with each  
17 promotion. So as a major, is there any other  
18 responsibilities that we haven't discussed here? I  
19 mean, I understand the structure of your office. I  
20 understand that there have been units that have been  
21 added to your office. Is there anything else that is  
22 of -- that I should know about the structure or your  
23 responsibilities?

24 A. Since I've been promoted to major, I think one of  
25 the more substantial responsibilities is now budget, is

1 dealing with budgets and hiring.

2 Q. And when you say budgets, generally what do you  
3 mean by that?

4 A. Both general revenue funding and then grants that  
5 we may have through the attorney general's office.

6 Q. Okay. So again, I understand the structure of  
7 your office now, but what is the special investigations  
8 unit? What are the specific responsibilities of that  
9 unit?

10 A. Currently there is an election team, a fraud  
11 team, a public integrity team, a human trafficking team,  
12 a financial investigations team, a money laundering team  
13 and a prosecution assistance team. There is also a  
14 group of auditors who assist those different teams and a  
15 group of analysts who assist those teams.

16 Q. And what are the responsibilities of the  
17 analysts?

18 A. The analysts would assist investigators in  
19 obtaining contact information regarding witnesses.

20 Q. Do they help maintain the files?

21 A. No.

22 Q. Is it the investigator's responsibility to  
23 maintain the individual file?

24 A. Yes, until it's finally done.

25 Q. Okay. And then at that point it would go to

1 Sherry, if I understand correctly?

2 A. Yes, sir it would.

3 Q. Okay. What else do the analysts do? You said  
4 they assist with contact information?

5 A. They would help prepare any kind of charts, if  
6 there were any kind of charts developed. They would  
7 search criminal history information.

8 Q. And they're civilians, correct?

9 A. Yes, sir, that's correct.

10 Q. All right. And so out of all these teams that  
11 you have described, which ones would deal with election  
12 code violations?

13 A. Just the elections team.

14 Q. So you have an elections team and a fraud team.  
15 Does the fraud team deal with election code violations?

16 A. If I could clarify?

17 Q. Sure.

18 A. It depends on the volume of cases that we have or  
19 the volume of work required for any of the  
20 investigations.

21 Q. Okay.

22 A. I would have a public integrity investigator  
23 assist the elections team or I could have a human  
24 trafficker investigator assist so long as it's not  
25 prohibited by their grants or anything like that.

1 Q. Okay.

2 A. So there have been some investigations which have  
3 required more investigators than what are currently  
4 assigned to the elections team.

5 Q. So as I understand it, the area of concentration  
6 for the elections team is election code violations?

7 A. Correct.

8 Q. But other teams can assist when necessary or  
9 individuals from those teams?

10 A. Yes, sir.

11 Q. How many individuals do you have working on the  
12 elections team?

13 A. I think there are three right now.

14 Q. Three. And who are those individuals?

15 A. It would be Stormy Jackson, Wayne Rubio and  
16 Jeanette. I'm sorry. Oh, gosh.

17 Q. Take your time. That's a lot of people you  
18 supervise.

19 A. It's Jeanette, I can't remember her -- I'm sorry.  
20 Jeanette -- Josephine Smith.

21 Q. And did any of these individuals, Jackson, Rubio  
22 or Smith, assist you in searching documents for the  
23 notice of deposition?

24 A. No. The only instruction I gave them was to get  
25 their investigative files in order.

1 Q. And that's both paper and electronic?

2 A. I just said investigative case files.

3 Q. Okay. And what does that mean?

4 A. It would mean their actual paper files.

5 Q. Okay. That would not include the electronic  
6 files -- strike that. Do they maintain electronic  
7 files?

8 A. Through our case reporting system.

9 Q. When was the special investigations unit formed?

10 A. I believe in June of 2005.

11 Q. And how was it formed?

12 A. I don't know.

13 Q. Why was it formed?

14 A. I don't really know.

15 Q. Was it in response to any particular concerns  
16 that you're aware of?

17 A. I don't know.

18 Q. Was it the subject of a grant?

19 A. At some point in time, SIU has had, and still  
20 does today, have investigators who are grant funded  
21 positions.

22 Q. Where would those grants come from?

23 A. I don't know much about the grants reporting back  
24 in 2005, but I do know that the grants that we currently  
25 have are typically through the governor's office.

1 Q. Do you know the amount of the grants that have  
2 come from the governor's office?

3 A. In total or the ones we currently -- the ones we  
4 currently have.

5 Q. Are you aware of the grant coming from the  
6 governor's office in 2005?

7 A. Yes, I'm somewhat aware of it.

8 Q. What was the amount of that grant?

9 A. I would say it's in excess of probably a million  
10 dollars.

11 Q. A million dollars. And when you say "in total,"  
12 do you mean that there have been a series of grants from  
13 the governor's office?

14 A. Yes. Because we also have grants that are  
15 through the -- for instance, an example would be the  
16 HIDTA task forces.

17 Q. HIDTA stands for?

18 A. High intensity drug trafficking area.

19 Q. Okay.

20 A. So we have grants through there.

21 Q. Okay. So let me see if I can ask this in a way  
22 that it makes sense. In total, how much in the form of  
23 grants from the governor have been dedicated to the SIU  
24 division?

25 A. I don't think I have that answer.



1 Q. In total, how much in grants from the governor's  
2 office have been dedicated to dealing with the issue of  
3 election code violation?

4 A. It would only be a portion of the grants that we  
5 receive.

6 Q. Okay. And can you give me a general total as to  
7 what we're talking about?

8 A. Well, in -- if I could. In 2005, I think we did  
9 get a Burns Grant from the governor's office. And  
10 that's the grant I think that was in excess of a million  
11 dollars.

12 Q. Okay.

13 A. Out of that grant the OAG hired a number of  
14 investigators. A portion of which served in the special  
15 investigations unit.

16 Q. Now, when these grants are issued, is there an  
17 indication of the purpose or the reason for the grants?

18 A. Yes.

19 Q. Okay. And so you talked about the Burns Grant in  
20 2005. What was the reason for the Burns Grant?

21 A. To conduct criminal investigations. I believe,  
22 if my memory is correct, it was for money laundering,  
23 sex offender apprehension, cyber crimes, public  
24 integrity and election code violations and white-collar  
25 crimes.

1 Q. So it was not just election code. It was a  
2 series of different responsibilities that the SIU had at  
3 the time.

4 A. I'm sorry. Could you restate that one more time?

5 Q. Sure. The grant that was in excess of a million  
6 dollars was -- was that for the SIU unit or was that for  
7 the OAG's office in general, and it was disbursed  
8 amongst the various units?

9 A. It was a grant for the entire criminal  
10 investigations division and it was disbursed between the  
11 various units.

12 Q. Okay. Can you tell me, either specifically or  
13 generally, how much money has been dedicated to election  
14 code violations in the State of Texas at this point?  
15 And I'm talking about the SIU unit.

16 A. I really don't have that number.

17 Q. You give me a general ball park?

18 A. I believe we only had that grant for one or  
19 two years.

20 Q. Okay.

21 A. And I want to say that -- my memory is that about  
22 \$90,000 of that grant was used for the investigation and  
23 prosecution of election code offenses.

24 Q. And you're talking about the 2005 grant?

25 A. Yes, sir.

1 (Exhibit No. 583 was marked.)

2 BY MR. GEAR:

3 Q. I'm showing you what's been marked as Exhibit 583  
4 and I'll give you a chance to take a look at that.

5 A. Okay, sir.

6 Q. Okay. Have you seen this document before, sir?

7 A. No, sir.

8 Q. Okay. Can you tell me what it?

9 A. It is titled election code -- election code  
10 resolve prosecutions by the office of the Attorney  
11 General.

12 Q. Okay. And can you tell me what this is in  
13 reference to?

14 A. It indicates the number of cases, criminal  
15 investigation division case hours, criminal prosecution  
16 division case hours, criminal investigation division  
17 cost, criminal prosecutions division cost and then a  
18 combined cost.

19 Q. And have you prepare add similar form in  
20 functions of your duties?

21 A. No, sir.

22 Q. This indicates -- and if you look at the bottom  
23 right-hand corner, it indicates January 25, 2011. Do  
24 you see that?

25 A. Yes, sir.

1 Q. And it says, "as of January 25, 2011?"

2 A. Yes, sir.

3 Q. So as of January 25, 2011 it indicates that -- up  
4 at the top, "resolved prosecutions." Do you see that?

5 A. Yes, sir.

6 Q. And it says, "number of cases." Do you see that?

7 A. Yes, sir.

8 Q. And what's that number of cases?

9 A. 62.

10 Q. And would that be accurate as of January 25,  
11 2011?

12 A. I believe that would be representative of that  
13 time.

14 Q. It says, "criminal investigation division case  
15 hours." And do you see the number there?

16 A. Yes, sir.

17 Q. And how many number -- what is that number?

18 A. 10,649.

19 Q. Do you believe that that would be accurate  
20 representation?

21 A. I don't know if that number deals with just those  
22 specific prosecutions or if it's actually larger.

23 Q. And when you say, "specific prosecutions," you're  
24 talking about if it just deals with election code  
25 violations?

1 A. Yes, sir.

2 Q. Okay. So it could be more or it could be less,  
3 if I understand your testimony?

4 A. Correct.

5 Q. Do you know who prepared -- who prepared this  
6 form?

7 A. I don't know who prepared the form.

8 Q. Do you know who would be responsible for  
9 preparing this form?

10 A. I believe it would be our budget or accounting  
11 division.

12 Q. Okay. And if I understood your testimony, you  
13 are now in charge of budgeting aspects?

14 A. No, sir, not completely. We have a budget and  
15 accounting division and I would work with them on  
16 various issues.

17 Q. Does that have a supervisor?

18 A. Budget has a supervisor and I think accounting  
19 has a supervisor as well.

20 Q. And who would that supervisor be for budgeting,  
21 first?

22 A. I've met a lot of new people in the last month  
23 and a half. I don't know who's in charge of the budget  
24 right now.

25 Q. Okay. And the other division that you --

1 A. The other would be accounting division.

2 Q. And do you know who the supervisor for accounting  
3 is?

4 A. I believe that's Greg Herbert.

5 Q. Greg Herbert. Okay. All right. So essentially  
6 this goes through -- and again, the title of this  
7 document is election code resolve prosecutions. And it  
8 goes through number of cases, the number of hours,  
9 criminal prosecution division case hours. Why would  
10 that be distinguished between investigation division  
11 case hours and prosecution division case hours?

12 A. I believe internally within the OAG they have  
13 divided budgets.

14 Q. Okay. And so who would be the supervisor of the  
15 budget division in 2011, if you know?

16 A. I don't know.

17 Q. It says, "combined CID, CPD hours." Do you know  
18 what that stands for?

19 A. Combined CID and CPD hours I believe would  
20 represent a total of the hours worked by the criminal  
21 investigations division or the criminal prosecutions  
22 division.

23 Q. Okay. And that number is 16,952?

24 A. Yes, sir.

25 Q. And then it goes on to indicate, "criminal

1 investigation division costs." Do you see that?

2 A. Yes, sir.

3 Q. And what is that cost?

4 A. \$792,217.

5 Q. Okay. And then, the next line is, "criminal  
6 prosecution division cost." Do you see that?

7 A. Yes, sir.

8 Q. All right. And do you see what the number is?

9 A. \$483,258.

10 Q. And the combined cost of both?

11 A. \$1,275,475.

12 Q. All right. And then in -- at the bottom of this  
13 sheet it indicates, "statistics on this sheet relate to  
14 election code prosecutions during the Abbott  
15 Administration as of January 21, 2010," correct?

16 A. Yes, sir. That's what it says.

17 Q. Okay. And so it also includes a total direct  
18 expense such as travel, court cost and other case fees.  
19 Do you see that?

20 A. Yes, sir.

21 Q. All right. Any reason to dispute the numbers  
22 that are indicated on this exhibit?

23 A. No, sir.

24 Q. All right. Do you know how much has been  
25 expended for election code violation prosecutions from

1 January of 2010 to the present?

2 A. No, sir, I do not.

3 Q. So what is the purpose of the, I believe you  
4 said, "election team," what is the purpose of the  
5 election team?

6 A. The elections team responsibility would be to  
7 conduct criminal allegations of election code offenses.  
8 These are typically referred by the Secretary of State,  
9 local, district county attorneys, local elections  
10 administrators or local law enforcement.

11 Q. Okay. And I believe I asked you this before, but  
12 let me make it more specific to the elections team. Was  
13 the elections team formed in response to any concerns  
14 that you're aware of?

15 A. It's my understanding that since 1985 the office  
16 of the Attorney General has had jurisdiction in election  
17 code offenses or concurrent jurisdiction. So the office  
18 of the Attorney General conducts those kinds of  
19 investigations.

20 Q. And do you have knowledge of election code  
21 prosecutions, investigations going back to 1985?

22 A. No, sir, I do not.

23 Q. Would those records be maintained somewhere?

24 A. I don't know what the records retention is for  
25 those.



1 Q. How far back does your knowledge extend?

2 A. I would say it goes back to, I think, 2002.

3 Q. Are you aware of any voter impersonation  
4 investigations, prosecutions, that occurred prior to  
5 2002?

6 A. No, sir.

7 Q. You talked a little bit about the jurisdiction of  
8 the SIU. What jurisdiction does the special  
9 investigations unit have in the State of Texas?

10 A. Do you mean specifically towards elections or in  
11 the broader sense?

12 Q. Elections.

13 A. Chapter 273 of the Texas Elections Code discusses  
14 the investigations of election code violations. If you  
15 have a single jurisdictional election, the jurisdiction  
16 may rest with the local district or county attorney. If  
17 you have multi-jurisdictional elections, then the  
18 jurisdiction may rest with the Texas Attorney General's  
19 office. Chapter 273 authorizes the Texas Attorney  
20 General's office to conduct investigations and  
21 prosecutions of either type, working in conjunction with  
22 local DAs or law enforcement.

23 Q. So when you say, "it authorizes them," does that  
24 mean they have direct jurisdiction?

25 A. Yes, I believe the statutory language says they

1 have concurrent jurisdiction.

2 Q. Are they authorized to take the lead on any of  
3 these particular investigations, prosecutions?

4 A. I believe that in the case of  
5 multi-jurisdictional elections, the answer would be yes.

6 Q. All right. And I believe you've answered this in  
7 a general way. Does the SIU prosecute the cases that it  
8 investigates?

9 A. Oh, no, sir.

10 Q. So let's talk about that structure a little bit.  
11 Your unit, the SIU, conducts the investigations. How  
12 does it then, shift to the prosecution stage?

13 A. At the completion of our investigation, we would  
14 prepare an investigative packet with statements,  
15 reports, supporting documentation, it could be recorded  
16 interviews, those kinds of things. And that would be  
17 presented to the local district attorney, county  
18 attorney or to the criminal prosecutions division.

19 Q. And did you produce these election investigation  
20 packets to your attorney, to your attorney in this case?

21 A. In the scope of this?

22 Q. Yes.

23 A. No.

24 Q. All right. And you said something in your  
25 answer, and I want to kind of flesh that out a little

1 bit. The investigations packet would be then, turned  
2 over to -- can you go through those again for me?

3 A. It would be either the criminal prosecutions  
4 division, or a local district or county attorney.

5 Q. Okay. And so the criminal prosecutions division  
6 is within the office of the Attorney General, correct?

7 A. Yes, sir.

8 Q. Okay. And they would be the ones that would be  
9 primarily responsible for prosecutions within your  
10 office, the OAG's office?

11 A. Unless it was the joint prosecution with the  
12 local DA.

13 Q. Okay. And is there a supervisor in the criminal  
14 prosecutions division?

15 A. Yes, sir.

16 Q. And do you know who that is?

17 A. Adrian McFarland.

18 Q. And how long -- and is that a he or she?

19 A. It's a she.

20 Q. And do you know how long Ms. McFarland has been  
21 the director of that -- of the criminal prosecution  
22 division?

23 A. I don't know.

24 Q. So other than providing the investigations  
25 packet, are there communications regarding -- that

1       you're -- the SIU would engage in regarding the contents  
2       of the investigations package? I'm talking about with  
3       the criminal prosecutions division. How does the  
4       package get delivered? I mean, is there -- is it simply  
5       the package is prepared and passed off and that's the  
6       end of your role? Do you understand what I'm trying to  
7       ask you?

8           A. Yes, sir.

9           Q. Okay.

10          A. And I would have to say it depends. Over the  
11       years it has changed. And it does not end our role.  
12       Frequently, the prosecutors identify additional  
13       witnesses they want interviewed or additional documents  
14       they want obtained. And so they might ask the  
15       investigators to do additional work.

16          Q. So is it fair to say the investigator would stay  
17       with the case through the prosecution, the process of  
18       prosecution to assist when necessary?

19          A. Ideally, yes.

20          Q. Okay. Are the investigators called to testify at  
21       all in these election code violation prosecutions?

22          A. Yes, sir.

23          Q. Have you ever been called to testify during any  
24       of the election code prosecutions?

25          A. I have been subpoenaed, however, never had to

1 testify.

2 Q. How often has that happened, subpoenaed?

3 A. I would say once or twice -- I would say twice.

4 Q. Do you recall the specific case?

5 A. It would be the State of Texas versus Anita  
6 Baeza.

7 Q. BI?

8 A. B-A-E-Z-A.

9 Q. Okay.

10 A. There was another case that was -- I don't  
11 remember the defendant's name, but it was out of Hidalgo  
12 County and was prosecuted in Brooks County?

13 Q. Do you remember the time period on that one?

14 A. I would say it was probably a case we  
15 investigated in 2008 or 2009. I was summons down  
16 probably about 2010.

17 MR. GEAR: We've been going for a while. Do  
18 you guys want to take a break?

19 THE WITNESS: Yes, please.

20 MR. GEAR: Let's take a little short break.  
21 Ten minutes.

22 MR. SWEETEN: That's fine.

23 (Brief recess.)

24 BY MR. GEAR:

25 Q. Back on the record. We talked a little bit about

1        what the -- actually we talked a lot about what the SIU  
2        does, what their responsibilities are. I just wanted to  
3        circle back to get a clear understanding, the SIU  
4        conducts criminal investigations?

5        A. For the most part, yes.

6        Q. And let's narrow that even more and talk about  
7        election code violations. Are those always criminal  
8        investigations?

9                MR. SWEETEN: That he conducted?

10        BY MR. SEAR:

11        Q. The SIU that you conduct as a supervisor?

12        A. I would say the vast majority are criminal.

13        Q. And when you say, "vast majority," the other  
14        portion of it, when would that cross over, or why would  
15        that cross over into the civil realm?

16        A. Can I give you an example?

17        Q. Please.

18        A. We were referred a criminal case from the  
19        Secretary of State's office from Waller County and it  
20        involved allegations of voters not being allowed to vote  
21        in an election. I think it was the 2006 general  
22        election. And there's a particular university there  
23        named Prairie View University, Prairie View A&M  
24        University. And there were allegations that the  
25        elections department did not process their voter

1 registration applications. And consequently, when the  
2 voters went to the polls, they weren't allowed to vote.  
3 So our office worked on the investigation of the  
4 potential criminal misconduct for unlawfully rejecting  
5 voters. But we also assisted the Department of Justice,  
6 I think it was a civil rights division, in the analysis  
7 of the data regarding the voter registration and what --  
8 why voters weren't processed properly and what were the  
9 reasons. So many were -- because the address wasn't  
10 complete, so many didn't provide necessary -- so we did  
11 a statistical analysis during that investigation, which  
12 was then used, I believe civilly in action by the  
13 Department of Justice against Waller County.

14 Q. So your overall responsibilities in SIU have also  
15 involved both communications and in conjunction with  
16 working with the Department of Justice?

17 A. Occasionally, yes.

18 Q. So for the vast majority of the criminal  
19 investigations, what is the standard that these cases  
20 would ultimately have to be prosecuted by? Is it beyond  
21 a reasonable doubt?

22 A. Yes, sir.

23 Q. Okay. So it's also fair to say that just because  
24 you receive a referral does not mean that that person is  
25 guilty of what the allegation is. There's an

1 investigation and until proven guilty, it's simply a  
2 referral?

3 A. That's correct.

4 Q. Okay. And so we spoke a little bit about fraud  
5 in the State of Texas. So I would like to define that a  
6 little bit more. How do you define voter fraud?

7 MR. SWEETEN: Do -- let me make sure I'm  
8 clear. Do you mean how does the SIU? Because that was  
9 in your definition.

10 MR. GEAR: Yes. Yes.

11 MR. SWEETEN: Okay.

12 A. We would define it as a violation of election  
13 code offenses or other penal code offenses associated  
14 with elections.

15 Q. (By Mr. Gear) And there are two chapters that  
16 deal with election code violations, is I'm correct or  
17 multiple?

18 A. Oh, no. Yeah, there's multiple chapters that  
19 deal with violations.

20 Q. Okay. Let me try my hand at this. Chapter 68  
21 deals with what type of election code violations?

22 A. I don't think chapter 68 deals with election code  
23 violations. 64 deals with some.

24 Q. 64?

25 A. 63, 84, 86, 253, and I know there are others.



1 Q. And I'm not going to ask you to identify and  
2 define each of these chapters. Which of these chapters  
3 deals with voter impersonation?

4 A. That would be the -- it could potentially be the  
5 voter registration. And that would be in, I believe  
6 Chapter 13. And then also, it could also be during the  
7 early voting which is covered in 86 or 84. And it also  
8 could be during a poll place violation which is, I think  
9 in 64.

10 Q. You said 86 or 84?

11 A. Yes, sir. I'm not sure I know -- I'm not sure I  
12 remember perfectly.

13 Q. Okay.

14 A. If I could just say that we have different  
15 categories. We have early voting. We have -- which  
16 early voting also includes mail-in ballot. And then, we  
17 also have poll place violations.

18 Q. And poll place violations would be chapter 64, if  
19 I understood you correctly?

20 A. Some of the early voting can also involve poll  
21 place violations. But I think predominantly 64 is poll  
22 place.

23 Q. Okay. So early voting involves both by mail and  
24 poll place?

25 A. Yes, sir.

1 Q. Okay. And I threw out the term "voter  
2 impersonation." What is voter impersonation? How do  
3 you define that?

4 A. Voter impersonation is either someone who is not  
5 registered to vote or has -- is registered to vote and  
6 has already voted and using somebody else's voters  
7 registration certificate to vote again.

8 Q. When you say, "not register to vote," what do you  
9 mean by that?

10 A. This could be a person who has not gone through  
11 the process of registering to vote, but is using  
12 somebody else's certificate to vote.

13 Q. So the underlying premise, for lack of better  
14 words, is they are using somebody else's identity to  
15 cast a ballot?

16 A. Correct.

17 Q. Now, are you familiar at all with SB 14?

18 A. Some of it.

19 Q. Were you involved in any communications during  
20 the legislative debates on SB 14?

21 A. No, I wasn't involved in the communication.

22 Q. Okay. And let me be more specific on that. Were  
23 you involved in, for instance, communicating with the  
24 governor's office regarding voter ID during the  
25 legislative debates on SB 14?

1 A. No, sir.

2 Q. All right. And again, were you involved in any  
3 communication with any of the State agencies regarding  
4 SB 14 during the legislative debates?

5 A. No, sir.

6 Q. And so how did you become familiar with SB 14?

7 A. One of our responsibilities at the attorney  
8 general's office is to review, you know, statutes.

9 Q. Okay.

10 A. So obviously, as kind of a criminal investigator  
11 with -- that's charged with the responsibility of  
12 looking at election laws, I looked at that one.

13 Q. And so when you say, "review statutes," can you  
14 tell me what you mean. And specifically in terms of  
15 voter ID legislation or SB 14, what would -- what would  
16 your responsibility be in that respect?

17 A. Just reviewing the proposed statutes.

18 Q. Do you provide an analysis? Do you provide a  
19 summary of the -- of your review of SB 14?

20 A. No. I did not.

21 Q. So help me understand. Other than it being a  
22 provision that deals with election code, what other  
23 reasons would you have to look at it?

24 A. And this is more broad. In some cases we are  
25 asked to do a bill analysis and assess a fiscal impact.

1 Q. Were you asked to do a bill analysis for SB 14?

2 A. No, sir.

3 Q. Was anyone within your office asked to do a bill  
4 analysis?

5 A. I don't know.

6 Q. Is that something that you would generally do  
7 for -- let me narrow this down so it's easier. Would  
8 that be something that your office has done in the past  
9 for voter ID legislation?

10 A. I don't know if we have been asked to do that.

11 Q. Who would be the entity that would make that  
12 request?

13 A. I believe it would come from our governmental  
14 relations division.

15 Q. And where is that division located within the  
16 structure of the government?

17 A. I mean, it would be within the intergovernmental  
18 relations division within the office of the attorney  
19 general.

20 Q. Okay. And so tell me a little bit about that  
21 particular division, what do they do?

22 A. They deal with other branches of State  
23 government.

24 Q. Specifically as it relates to voter ID  
25 legislation, what would they -- what would their

1 responsibilities be?

2 A. They would serve as a liaison, I believe, between  
3 the legislative branch and the office of the attorney  
4 general. But I don't know their specific -- their  
5 specific duties.

6 Q. So the intergovernmental division?

7 A. Intergovernmental relations division.

8 Q. Relations division. Did you have any  
9 communications with that division regarding SB 14?

10 A. I don't believe so.

11 Q. And when I say, "you," I mean anyone within the  
12 SIU. Are you aware of anyone who had communications  
13 with the intergovernmental division?

14 A. Like I said, I would like to make a  
15 clarification.

16 Q. Sure.

17 A. I think I may have been asked to provide my  
18 spread sheets, at some point in time.

19 Q. And who asked you to provide the spread sheets?

20 A. I don't remember if it was my division chief or  
21 someone within the intergovernmental relations division.

22 Q. Did you provide the spread sheets?

23 A. Yes, sir.

24 Q. When did you provide the spread sheets?

25 A. I routinely update those on about a monthly

1 basis. So I just provided them as requested.

2 Q. Okay. So help me understand. You said, "you  
3 provide them as requested." You testified that you  
4 recall being asked to provide your spread sheets,  
5 correct?

6 A. Uh-huh.

7 Q. Were you asked to provide them on a monthly  
8 basis?

9 A. I generally am asked almost on a monthly basis to  
10 provide these. It could be for a public information  
11 request. It could be a specific legislative request  
12 or...

13 Q. Do you track who makes a request for your spread  
14 sheets?

15 A. I don't. I -- public information request would  
16 be tracked through our public information officer.

17 Q. What about request from legislatures?

18 A. Do I track that?

19 Q. Do you track that? "You," being you or your  
20 office staff in your office?

21 A. Well, I would believe that the Intergovernmental  
22 relations division would track it.

23 Q. Do you track from your office, SIU, how many  
24 times you produce the spread sheet?

25 A. No.

1 Q. Are you aware of any legislators that the spread  
2 sheet had been provided to?

3 A. Yes.

4 Q. All right. And who was your spread sheet  
5 provided to?

6 MR. SWEETEN: Okay. Here we're getting into  
7 a potential area of privilege. I think the court's  
8 order has said the transmission of information is fine,  
9 but as to the identity of a legislator it -- he wouldn't  
10 reveal that. So I think that would be subject to the  
11 court's order on privilege.

12 MR. GEAR: And that's not my understanding  
13 of the court's order. I think we've been asking,  
14 generally through all these depositions the who, what,  
15 when, where. It's the substance of that communication  
16 that may be privileged.

17 MR. SWEETEN: Yeah.

18 MR. GEAR: Is my understanding.

19 MR. SWEETEN: But I think there's a separate  
20 issue on -- and Risa and I discussed this yesterday. I  
21 believe it is on Page 7 of the court's order. That  
22 would prevent -- let me see if I can find that. Let me  
23 go off the record.

24 MR. GEAR: Go ahead.

25 (Discussion off the record.)

1 BY MR. GEAR:

2 Q. So off the record we had a brief discussion of  
3 privilege. There's been a determination that the  
4 individual who requested the spread sheet from you has  
5 waived that privilege. So let me go back to the  
6 question. What was the name of the legislator that  
7 requested the spread sheet?

8 A. First let me say that I don't communicate  
9 directly with them at all. They communicate through our  
10 intergovernmental relations division.

11 Q. Okay.

12 A. I was advised that Representative, I think his  
13 name is Raphael Anchia, requested the spread sheet.

14 Q. Did you receive that request by e-mail? How does  
15 that request come to you?

16 A. I don't specifically recall exactly how that one  
17 request came in. It could have been through e-mail. It  
18 could have been on the phone. I could have been  
19 directed by my division chief. Most times it's either  
20 on the phone or by e-mail.

21 Q. Do you recall when that request was made?

22 A. He's requested my spread sheets multiple times so  
23 I don't know.

24 Q. Well, let's kind of break that down. Can you  
25 give me a general time period for when he's requested



1 your spread sheets?

2 A. He's requested updates on election  
3 investigations. I think dating back to like 2006 and  
4 2007, all the way to the present.

5 Q. Did you ever have any direct contact or  
6 communication with Representative Anchia?

7 A. No, sir.

8 Q. Did anyone within your office have any direct  
9 contact or communication with Representative Anchia  
10 regarding the spread sheets?

11 A. I don't know.

12 Q. How would you produce those spread sheets to  
13 Representative Anchia?

14 A. I would send them electronically, via e-mail. In  
15 a PDF format.

16 Q. Did you search your electronic files for any  
17 e-mails dealing with your communications or dealing with  
18 the production of the spread sheets that were given to  
19 Representative Anchia?

20 A. Yes, sir.

21 Q. Did you find those?

22 A. I found some.

23 Q. And did you produce those to your attorney?

24 A. Yes.

25 Q. And are you aware of whether or not your office,

1 the SIU, or the attorney general's office for that  
2 matter, had any communications with Representative  
3 Anchia regarding SB 14?

4 A. I did not have any communication with  
5 Representative Anchia and I do not believe that anybody  
6 in the special investigations unit had any  
7 communications with Representative Anchia.

8 Q. Are you aware of any communications with the  
9 OAG's office with Representative Anchia?

10 A. Yes, I am aware of communications between the two  
11 offices.

12 Q. Regarding SB 14?

13 MR. SWEETEN: Don't speculate. If you don't  
14 know.

15 A. I don't know for sure.

16 Q. (By Mr. Gear) Do you know when that communication  
17 took place? Was it during the legislative session,  
18 2011?

19 A. Yes, sir, I believe so.

20 Q. Do you know who initiated that communication?

21 A. No, sir.

22 Q. Do you know who that communication was with out  
23 of the OAG's office?

24 A. Again, it would be someone in our  
25 intergovernmental relations division. And potentially

1 also our public information division.

2 Q. Are you aware of any communication with  
3 Representative Anchia regarding any voter ID  
4 legislation? And I'm talking about from the SIU  
5 division.

6 A. Can you say that one more time?

7 Q. Are you aware of any communication from the SIU  
8 division, and of the -- from either you or any of your  
9 staff to Representative Anchia regarding any of the  
10 voter ID legislation.

11 A. We don't communicate with the representatives.

12 Q. So the answer to that is no?

13 A. No.

14 Q. Are you aware of any communications from the  
15 intergovernmental -- is it special division?

16 A. Intergovernmental relations division.

17 Q. Relations division with Representative Anchia  
18 regarding any of the voter ID legislation?

19 MR. SWEETEN: Objection; asked and answered.  
20 Go ahead.

21 BY MR. GEAR:

22 Q. You can answer.

23 A. I don't know.

24 Q. Was that it?

25 A. Yeah. I don't know.

1 Q. Okay. Can you tell me what version of the spread  
2 sheet was produced to Representative Anchia?

3 A. The most current at the time. As I said, I  
4 update it monthly or as new referrals come in or as we  
5 obtain new indictments new or judgments and sentences, I  
6 update them at that time.

7 Q. And when you say, "at the time," I'm trying to  
8 get an idea of the time frame you're talking about here.  
9 It was during the 2011 legislative session?

10 A. I'm sorry. What 2000 what.

11 Q. '11 I believe you said?

12 A. Yes, sir. 2011.

13 Q. Okay. And you said there were also periods prior  
14 to that. I think you said 2006, 2007, that you provided  
15 him, "you," being your spread sheet has been provided to  
16 Representative Anchia?

17 A. If I could clarify?

18 Q. Please do.

19 A. Back in 2006 and 2007 it wasn't -- it wasn't a  
20 spread sheet. It was just a little summary of where we  
21 got our referrals from.

22 Q. Okay. Did you produce that to your attorneys?

23 A. Yes, sir.

24 Q. Any other representatives or senators that you're  
25 aware of that received a copy of the spread sheet?

1 A. Not that I recall.

2 Q. So I was asking you about voter impersonation.  
3 And I believe you said that was -- one of which was at  
4 the poles. And it was under Chapter 64. Chapter 64,  
5 does it cover more than just voter impersonation?

6 A. Yes, sir.

7 Q. Can you give me a general idea of the types of  
8 violations covered under chapter 64?

9 A. 64 contains the illegal voting statute, which  
10 there are four different types of illegal voting in the  
11 State of Texas.

12 THE REPORTER: Are you saying legal or  
13 illegal?

14 A. Illegal, sorry. Chapter 64 contains the four  
15 different types of illegal voting. It also contains  
16 other provisions such as unlawful assistance and  
17 prohibited conduct in polling places, such as  
18 electioneering, lawyering, I believe candidate in a  
19 polling place.

20 Q. When you say, "illegal voting," can you identify  
21 that a little bit more?

22 A. Yes, sir. There are different elements to  
23 illegal voting.

24 Q. Okay.

25 A. One form of illegal voting is voter

1 impersonation.

2 Q. Okay.

3 A. Another form of illegal voting is a person who  
4 votes more than once in an election. Another type is a  
5 person who is ineligible for election. And the final  
6 type is a person who marks a ballot contrary to the  
7 instructions of the voter.

8 Q. So based on your familiarity with SB 14, what  
9 type of violation would be covered under SB 14, the  
10 provisions of SB 14?

11 A. The voter impersonation.

12 Q. Anything else?

13 A. I think that would be it.

14 Q. Has the Texas Attorney General made investigating  
15 voter fraud one of his top priorities?

16 A. It is one of the -- one of our investigative  
17 functions in our office.

18 Q. And the question was, is it a priority within  
19 your office?

20 A. As much as any other priority. And we have  
21 multiple priorities.

22 Q. So is your answer, yes, it is one of the AG's  
23 priorities?

24 A. I would say yes.

25 MR. SWEETEN: Objection; asked and answered.

1 BY MR. GEAR:

2 Q. Can you tell me how long it's been one of the  
3 priorities of the Texas Attorney General?

4 A. That, I don't know.

5 Q. Investigating election code violations, is it one  
6 of the primary responsibilities of the special  
7 investigation unit?

8 A. It's one of the investigative responsibilities of  
9 the special investigations unit.

10 Q. But it would be the primary responsibility of the  
11 elections team?

12 A. Correct.

13 Q. I want to change your focus about the referral  
14 process and how that actually comes into the attorney  
15 general's office. Is there a provision of the Texas  
16 election code that allows -- that sets out the process  
17 for referrals?

18 A. Yes, sir, there are.

19 Q. And can you tell me generally what those are?

20 A. There's -- it's found in two places in the Texas  
21 election code. One indicates a direct referral from the  
22 elections administrator themselves. If they have reason  
23 to believe that a voter has committed illegal voting.

24 Q. Okay.

25 A. The second is found in chapter 273 of the

1 election code, which talks about the investigations of  
2 election code violations. And it indicates that the  
3 Secretary of State may refer a case to our office. It  
4 indicates that two voters themselves who file an  
5 affidavit, sworn affidavit, can refer to our office.  
6 And also local district attorneys and county attorneys  
7 can file it with our office.

8 Q. So let me just kind of summarize that, if I can.  
9 So there are referrals that come from the Secretary of  
10 State's office?

11 A. That's correct.

12 Q. There are referrals that come from citizens and  
13 local election officials?

14 A. Yes.

15 Q. There are referrals that come from law  
16 enforcement agencies?

17 A. Yes.

18 Q. Including local DA's or local prosecutors?

19 A. Yes, sir.

20 Q. Are -- SIU, are they limited to election codes in  
21 the State of Texas? Do they investigate outside of the  
22 state?

23 A. Oh, no, sir.

24 Q. So other than what we've just summarized about  
25 how referrals come in, are there any other ways that



1 referrals could be received by the OAG's office?

2 A. No, sir.

3 Q. And who in the OAG's office is in charge of  
4 receiving and maintaining election code violation  
5 referrals?

6 A. It depends on the source of the referral.

7 Q. So there are various sources that you've  
8 testified to?

9 A. Correct.

10 Q. So is there a different person responsible for  
11 each source of referral?

12 A. Yes, sir. If it comes from the Secretary of  
13 State's office, it currently goes to the director of law  
14 enforcement. If it comes from a local DA or prosecutor,  
15 it would generally go to the criminal prosecutions  
16 division. If it comes from a direct referral from law  
17 enforcement agency, it could come to the director of law  
18 enforcement or it could come in to our peace officer  
19 liaison.

20 Q. Do you supervise all of these various entities?

21 A. No.

22 Q. Would you know when a referral has come into the  
23 OAG's office? Is there a way for you to keep track of  
24 the various forms of referrals?

25 A. Yes, sir.

1 Q. And how do you do that?

2 A. Through the spread sheet.

3 Q. Okay. And so who actually maintains that spread  
4 sheet?

5 A. I do.

6 Q. So in order to maintain that spread sheet, if it  
7 comes in, for instance through the director of law  
8 enforcement, how would you actually know it came into  
9 the office?

10 A. He provides it to me.

11 Q. Okay. And so that's what I was trying to get at.  
12 So there are various entities or sources that it would  
13 come to. They provide you with an electronic version of  
14 the referral or do they provide you with paper copy or  
15 both?

16 A. I would say sometimes both. They definitely  
17 provide me with a written copy.

18 Q. And is there a specific process in your office  
19 for making sure you're provided with copies of the  
20 referrals that come in?

21 A. Yes, sir.

22 Q. And what is that process?

23 A. We have an internal computer system which is  
24 called Webpass, which tracks referrals.

25 Q. Webpass?

1 A. Yes, sir, W-E-B-P-A-S-S.

2 Q. Is there a specific program that you use to  
3 maintain the spread sheet?

4 A. I maintain the spread sheet through Excel.

5 Q. Excel. Does anyone else, or is anyone else  
6 responsible within your office that maintains the spread  
7 sheet?

8 A. No, I'm the one who maintains the spread sheet.

9 Q. And you've been doing that since 2005?

10 A. No. I want to say 2007, 2008, somewhere around  
11 there.

12 Q. So when you talked about Representative Anchia  
13 back in 2006, that wouldn't have been the spread sheet  
14 in the version that you're currently maintaining?

15 A. That's correct.

16 Q. And I believe you indicated -- I believe you  
17 indicated that it was a summary. And can you describe  
18 what that summary would have looked like?

19 A. Yes, sir. It was a -- I believe it was a  
20 WordPerfect document. And it would identify the county  
21 of the offense, the referral source, and then the  
22 allegation.

23 Q. At some point, was your spread sheet updated to  
24 include violations from 2002?

25 A. Yes.

1 Q. And when did that happen?

2 A. I would say the spread sheet, the information we  
3 obtained on the 2002 cases, was probably around 2005.

4 Q. I'm not sure I understand your testimony now,  
5 because you said in 2003 -- 2006 when there was  
6 communication with Representative Anchia there was no  
7 spread sheet in the current form, correct?

8 A. Correct.

9 Q. And so that would have been in the form of a  
10 WordPerfect summary of referrals that have come into the  
11 OAG's office. Is that fair to say?

12 A. Yes, sir.

13 Q. Okay. And so you believe that -- now you're  
14 saying that in 2005, the spread sheet would have been  
15 updated?

16 A. If I could clarify.

17 Q. Please.

18 A. I found -- or obtained the information in 2005  
19 about the 2002 cases, but it was for a different  
20 purpose.

21 Q. And what was that purpose?

22 A. It was to identify the geographical regions in  
23 Texas that had election code violations.

24 Q. And when you say you, "found or obtained the  
25 information," what do you mean by that?

1           A. I queried our mainframe system to determine the  
2 election cases that we had on file.

3           Q. And why were you trying to determine the  
4 geographical area of violations?

5           A. To conduct -- to do a geographic analysis to  
6 determine where we would conduct training.

7           Q. Okay. And we'll get into the training a little  
8 bit later.

9           A. Yes, sir.

10          Q. So I think I understand the process by which  
11 referrals come into your office. They come into  
12 different sections depending on the source of the  
13 referral, correct?

14          A. Yes, sir.

15          Q. Is there a specific individual that conducts the  
16 intake of these referrals? Does that make sense?

17          A. There are different people conducting the intake,  
18 depending on where the referral source is.

19          Q. And you've testified to that already, correct?

20          A. When it comes -- when it's identified as an  
21 election violation referral, it comes to me and then I  
22 conduct an intake.

23          Q. And what is your intake process?

24          A. I obtain and review the referral packet and I  
25 identify the county of the offense, the election

1 involved, the referral source and the nature of the  
2 allegation.

3 Q. And you also update your spread sheet, as I  
4 understand it?

5 A. That's correct.

6 Q. Do referrals -- are they automatically given a  
7 complaint number or a tracking number?

8 A. They are given -- yes, they are given what we  
9 call a call for service number.

10 Q. And at that point, are they considered an  
11 official investigation or is that just simply to track  
12 the file as it moves through the system?

13 A. It's to track the file.

14 Q. Are there -- is it -- or has it occurred within  
15 your office where a referral has been given a call for  
16 service number, but it didn't actually generate into an  
17 official investigation?

18 A. Yes, sir.

19 Q. Who makes the actual decision to investigate or  
20 not to investigate?

21 A. It's a multi-person decision.

22 Q. Help me understand it.

23 A. Okay. The division chief or the major is  
24 required to approve it.

25 Q. Is that you?

1           A. That would be me now. The captain, the  
2 lieutenant, and then the director of law enforcement as  
3 well.

4           Q. So does that occur during a meeting or is there  
5 e-mail communication that's passed between the  
6 individuals you just testified about? How is that  
7 decision actually made?

8           A. It's generally meetings.

9           Q. Okay. And so is that a weekly meeting, monthly  
10 meeting, how do these meetings occur?

11          A. Generally as referrals come in.

12          Q. Okay. Do you wait until you have a certain  
13 number of referrals or is it each referral?

14          A. It's generally each referral.

15          Q. All right. And so during this meeting what is  
16 actually discussed regarding the referral?

17          A. The first thing that's discussed and evaluated is  
18 what -- what kind of offenses are they. We have a  
19 practice that some of the referrals that we get are  
20 class C misdemeanors.

21          Q. Okay.

22          A. And those are fine-only offenses. And all  
23 election cases are labor intensive and so we generally  
24 discuss the fact that this is a class C misdemeanor and  
25 so we don't investigate those.

1 Q. And who would investigate the class C  
2 misdemeanors, if anyone?

3 A. The local jurisdictions like sheriff's  
4 departments, police departments, local county attorneys.

5 Q. So is there a determination made at that meeting  
6 whether or not to refer it back to the referring source?

7 A. Right. If we determine that it's a class C  
8 misdemeanor then we will say we do not have the  
9 resources to investigate this. Suggest contacting your  
10 county attorney or local law enforcement officials.

11 Q. Does your spread sheet indicate which ones are  
12 referred back or whether there was a determination not  
13 to investigate?

14 A. No, sir.

15 Q. Do you keep a separate tracking system of what  
16 has been closed, essentially in your office and referred  
17 back to the referring source?

18 A. Webpass may have that indication in it.

19 Q. Did you produce that information to your  
20 attorney?

21 A. No, I did not.

22 Q. So as I understand it, Webpass would indicate the  
23 determination on how that case would be handled within  
24 the OAG's office or the SIU's office; is that correct?

25 A. If we advised that we were not going to



1 investigate a class C misdemeanor, yes.

2 Q. Okay. Once it's referred back, is there any  
3 additional tracking down by your office?

4 A. No, sir.

5 Q. Does the Texas OAG's office ever initiate its own  
6 investigations of alleged election code violations?

7 A. No, sir.

8 Q. It's 100 percent referral based?

9 A. It is referral driven.

10 Q. Are the referrals in the Texas OAG's office or  
11 the SIU maintained by subject matter or category?

12 A. No, sir.

13 Q. Are they maintained by county or by agency  
14 referring agency?

15 A. We generally maintain them by county and whether  
16 or not there's SOS referrals or whether or not they're  
17 other referrals.

18 Q. Is it possible to search within your mainframe  
19 database to determine the exact number of referrals from  
20 the SOS, for instance?

21 A. Yes, sir.

22 Q. And then it -- if I understood you correctly, the  
23 other search would be for others. And is it possible to  
24 determine the other source for referrals?

25 A. Yes, sir.

1 Q. Okay.

2 A. If I could clarify?

3 Q. Please.

4 A. The ability to search all of the election  
5 violations will require like a -- it will just  
6 categorize it as an election violation and I will have  
7 to go through manually and determine whether or not it  
8 was an SOS or a other referral.

9 Q. So it would require manual search?

10 A. Right.

11 Q. Okay.

12 (Exhibit No. 584 was marked.)

13 BY MR. GEAR:

14 Q. I've shown you what has been marked as  
15 Exhibit 584. Take your time and take a look at this.

16 A. Yes, sir.

17 Q. So first of all, I want to see if -- have you  
18 reviewed these types of documents before?

19 A. These types of documents, but not specifically  
20 this document.

21 Q. Okay. And what is this?

22 A. This is a -- I would call this a press release.

23 Q. And it comes directly out of the attorney  
24 general's office?

25 A. That's correct.

1 Q. All right. And when I say the attorney general,  
2 I mean Greg Abbott in 2005?

3 A. Yes, sir.

4 Q. Okay. And do you see the date on this, Friday  
5 June 3, 2005?

6 A. Yes, sir.

7 Q. All right. This indicates -- actually let me do  
8 something else just to make this go a little smoother.  
9 You've testified routinely about the existence of a  
10 spread sheet, correct?

11 A. Yes, sir.

12 Q. All right. Let me mark this, please.

13 (Exhibit No. 585 was marked.)

14 BY MR. GEAR:

15 Q. I'm showing you what's been marked as  
16 Exhibit 585. And I just asked you to take a look at  
17 that and identify it for the record, please.

18 MR. SWEETEN: Bruce, can I get a copy of  
19 that?

20 MR. GEAR: I do not have an extra copy of  
21 that. I don't not, sorry. I can make a copy if you  
22 want to do that.

23 MR. SWEETEN: Let's just do it at the break.

24 BY MR. GEAR:

25 Q. Is this the spread sheet that you've been

100

1 referring to? And to be fair, this may be a series of  
2 spread sheets and I'm just trying to understand what  
3 exactly they are.

4 A. If you could just give me a moment.

5 Q. Sure.

6 A. Yes, sir. They appear to be the spread sheet  
7 I've been referencing.

8 Q. Okay. Now, are all of these maintained by you,  
9 created by you?

10 A. Yes, sir.

11 Q. And this would be a version that was if I'm  
12 correct, and correct me if I'm wrong, that was printed  
13 in 2012. Do you see the date on the bottom of the  
14 spread sheet?

15 A. Yes, sir.

16 Q. And to be accurate, it was March 12th of 2012?

17 A. Yes, sir.

18 Q. And there's also another version here that was  
19 printed on March 9th of 2012. And it would be the  
20 election code referrals to the office of the attorney  
21 general August 2002 to the present. Do you see that  
22 particular version they I'm talking about?

23 A. Yes, sir.

24 Q. And would these have been printed by you?

25 A. They would be electronically published by me.

1 Q. Okay. And when you say, "electronically  
2 published," do you publish these spread sheets on any  
3 particular system? Do you make them publicly available?

4 A. If I could explain?

5 Q. Sure.

6 A. I maintain an Excel spread sheet that has three  
7 different books. One book is specifically for  
8 referrals. One book is specifically for prosecution  
9 resolved. And one book is for charges pending. And  
10 then I publish to a PDF any one of those three books or  
11 a combination of all three or all three.

12 Q. And when you say, "publish to a PDF," where does  
13 that go?

14 A. It could go to somebody in our open records  
15 division who has requested a copy. It could go to our  
16 intergovernmental relations division.

17 Q. So if a news agency wanted a copy of your spread  
18 sheets, then that would be published and released to the  
19 news agency?

20 A. Yes, sir.

21 Q. Okay. When news -- have news agencies made  
22 request for your spread sheets in the past?

23 A. Yes, sir.

24 Q. And other than the spread sheet, do you provide  
25 them with any additional information?

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1 A. No, sir.

2 Q. So it's generally the spread sheet that is  
3 publicly released when requested?

4 A. Yeah. If I could clarify.

5 Q. Please.

6 A. Unless they specifically asked for another  
7 document, such as a charging instrument or indictment or  
8 judgments or sentence.

9 Q. And those --

10 A. In some cases they do ask for those as well as  
11 the spread sheets.

12 Q. Okay. All right. So now you have your spread  
13 sheet in front of you that you've identified. And let  
14 me actually clarify something. You said there were  
15 three different versions of the spread sheet or three  
16 different books: The referrals, the prosecutions and  
17 pending. Can you identify for me, are there three  
18 different versions here or three different books or is  
19 this all from one of these versions of the spread sheets  
20 that you have testified?

21 A. This is one spread sheet which contains three  
22 books.

23 Q. Okay. And so looking at the spread sheet, it  
24 starts with TX 000006816. Could you -- I'm trying to  
25 get you to identify the books for me that are contained

1 within the spread sheet?

2 A. Referral TX 0056816, contains the charges pending  
3 resolution.

4 Q. And how far does that -- how many pages is that?

5 A. It's two-pages, sir.

6 Q. Okay. So the next set of spread sheet would be  
7 TX 0056818. And that indicates election code referrals  
8 to the office of the attorney general, prosecutions  
9 resolved. Is that accurate?

10 A. My Bates stamp is cut off on that. But this  
11 document contains the prosecutions resolved.

12 Q. And how many pages is that?

13 A. Contains five pages, sir.

14 Q. Okay. And then the -- there's another spread  
15 sheet that indicates on -- starts with TX 0056823. It  
16 indicates on the top, election code referrals to the  
17 office of the attorney general, August 2002 to the  
18 present. Do you see that one?

19 A. Yes, sir.

20 Q. And which one would this represent?

21 A. This one represents the referrals.

22 Q. And so I see that this is 2002 to 2012. Is that  
23 accurate?

24 A. Yes, sir.

25 Q. So during the 2011 session, this would not have

1       been the spread sheet that was provided to  
2       Representative Anchia?

3       A. Yes, that would be incorrect.

4       Q. That would be incorrect?

5       A. I'm sorry. This would not be the spread sheet  
6       that was provided to Representative Anchia.

7       Q. It would have only included the 2011 referrals?

8       A. Up to the most current, at the time of the  
9       request.

10       Q. And I believe I asked you and I'm sorry if I did,  
11       do you recall when you provided him a copy -- there were  
12       multiple occasions, but in 2011, do you recall the time  
13       period you provided to him these spread sheets?

14       A. It may have preceded the legislative session and  
15       it would have -- but we can provide him continuous  
16       updates. So he made multiple request.

17       Q. And you said, "it may have preceded the  
18       legislative session." Could it have been during the  
19       legislative session?

20       A. Yes, sir.

21       Q. Okay. All right. Do you know if he got a copy  
22       of the March 12, 2012 version?

23       A. I don't know.

24       Q. You don't know. Okay. So turning your attention  
25       back to Exhibit 584, I believe, which is the press



1 release from Attorney General Greg Abbott. It indicates  
2 on here that the attorney general's office announced the  
3 first indictments for alleged voter fraud in Texas.  
4 Would 2005 be the -- be the time period in which the  
5 first indictments were issued from regarding voter  
6 fraud?

7 A. I don't know that.

8 Q. Okay. And 2005 would have been when you came on  
9 board for the SIU?

10 A. That's correct.

11 Q. Do you know how these press releases are created,  
12 how they're generated?

13 MR. SWEETEN: Objection; calls for  
14 speculation.

15 BY MR. GEAR:

16 Q. Go ahead. Do you know how?

17 A. No, not really.

18 Q. Okay. Are you involved in the information that's  
19 contained within this particular press release?

20 A. No.

21 Q. Would you ever be asked for information prior to  
22 the release of these particular press releases?

23 A. Occasionally, yes.

24 Q. So the information that these -- that at least  
25 the 2005 press release is addressing, is election code

1 violations, correct?

2 A. Yes, sir, it is.

3 Q. And would you have provided information regarding  
4 these election code violations?

5 A. Not for this press release.

6 Q. Okay. So the first violation that's referenced  
7 in here is the Hardeman County, Precinct 1, Commissioner  
8 Johnny Akers, do you see that?

9 A. Yes, sir, I do.

10 Q. All right. And looking at Exhibit 585, which is  
11 your spread sheet, do you see that referenced in --  
12 within your spread sheet?

13 A. Yes, sir, I do.

14 Q. And specifically turning your attention to  
15 TX 0056818, is that the page that you're looking at?

16 A. Again, the Bates stamp is cut off on this one.  
17 But it is Page 1 of the prosecutions resolved.

18 Q. All right. And can you tell me what happened  
19 with the -- what were the facts of the Johnny Akers  
20 case?

21 A. He was -- the allegation is that he was handling  
22 mail-in ballots during the course of the election. And  
23 he was charged with six counts of possession of official  
24 ballot or carrier envelope of another. And then he  
25 plead guilty to one count of possession of an official

1 ballot or carrier envelope of another.

2 Q. And that's indicated in the press release as  
3 well, Exhibit 584?

4 A. In the press release it does not indicate that he  
5 has plead guilty. It only indicates that he has been  
6 charged with possession of a mail-in ballot.

7 Q. And just so that we clarify this as we move  
8 along, would this have been chapter 64 or would it have  
9 been a different chapter?

10 A. This would have been chapter 36 or 84.

11 Q. And that would not have involved voter  
12 impersonation, correct?

13 A. No, it would not have involved voter  
14 impersonation.

15 Q. There is a second indictment that's discussed  
16 here on May 27, Beeville resident, Melva Kay Ponce, do  
17 you see that?

18 A. Yes, sir, I do.

19 Q. And generally, can you tell me, does this  
20 allegation involve voter impersonation?

21 A. Yes, sir, it does.

22 Q. And looking at Exhibit 584, can you explain to me  
23 what the facts are?

24 A. Melva Kay Ponce utilized her mother's mail-in  
25 ballot to cast a vote in the 2004 general election.

1 Q. So that's a by mail violation?

2 A. It's a by mail voter impersonation, yes, sir.

3 Q. Would that have been covered under the provisions  
4 of SB 14? Would it have been prevented if SB 14 was in  
5 place?

6 A. No, sir.

7 (Exhibit No. 586 was marked.)

8 BY MR. GEAR:

9 Q. Just so I'm clear, both Akers and Ponce dealt  
10 with by mail ballot fraud?

11 A. Yes, sir.

12 Q. I'm showing you what's been marked as  
13 Exhibit 586. And take your time and take a look at  
14 that. Generally, just so we can move along, you  
15 indicated that Mr. Akers plead to the charge?

16 A. Yes, sir.

17 Q. Do you know what he plead to?

18 A. Plead guilty to one count of possession of  
19 official ballot or carrier envelope of another.

20 Q. And the Exhibit I just handed you, the press  
21 release from Greg Abbott indicates what he plead to?

22 A. Yes, sir.

23 Q. Okay. And again, just so I'm clear on the  
24 record, this is another press release from the attorney  
25 general's office?

1 A. Yes, sir.

2 Q. And the date of the press release is  
3 November 7th, 2005?

4 A. Yes, sir.

5 Q. All right.

6 (Exhibit No. 587 was marked.)

7 BY MR. GEAR:

8 Q. All right. So I'm showing you what's been marked  
9 as Exhibit 587. Take your time and then identify what  
10 it is for me, please.

11 A. Okay, sir.

12 Q. Can you identify that for me, please?

13 A. This appears to be a press release regarding  
14 indictments against four Nueces County voters.

15 Q. And the date of the press release?

16 A. Would be December 19, 2005.

17 Q. Okay. And it indicates who was indicted within  
18 the press release?

19 A. Yes, sir, it does.

20 Q. And can you tell me who was indicted?

21 A. Elida Garza Flores, Isabel Rios Gonzales,  
22 Josefina Marinas Suarez and Virginia Ramos Garza.

23 Q. And so either looking at your spread sheet or at  
24 Exhibit 587, can you tell me what the facts of that  
25 indictment were?

1           A.   Okay.   This case was a 2005 school district  
2           election.   And it would have been referred to our office  
3           by the Secretary of State's office.   And it involved  
4           mail-in ballot fraud.   And when I mean mail-in ballot  
5           fraud, it involves the unlawful handling of the mail-in  
6           ballots and also unlawful assistance in assisting the  
7           voter in the preparation of those ballots or the  
8           application to obtain those ballots.

9           Q.   So if I'm correct, this would not have been  
10          chapter 64, which deals with voter impersonation,  
11          correct?

12          A.   It potentially could have been.

13          Q.   Turning your attention to Exhibit 587, do you see  
14          where it says the indictments apply to violations of  
15          chapter 86?

16          A.   Yes.

17          Q.   Any reason to dispute that?

18          A.   No, sir.

19          Q.   Okay.   And turning to your spread sheet, do you  
20          see those individuals indicated on your spread sheet?

21          A.   Yes, sir, I do.

22          Q.   And can you tell me, ultimately, what the  
23          determination was on these cases, were they resolved?

24          A.   Yes, they were resolved.   Virginia Ramos Garza  
25          accepted a one-year pretrial diversion, which involved

1 12 months of community supervision. Elida Garza Flores  
2 also accepted a one-year pre-trial diversion in which  
3 she received 12 months of community supervision.  
4 Isabel Lisa Rios Gonzalez pleaded no contest to two  
5 counts of possession of an official ballot or carrier  
6 envelop of another, and received one-year deferred  
7 adjudication.

8 Q. All right. And so I want to ask you, there's a  
9 couple of things that you said that I didn't completely  
10 understand. A class C or class E misdemeanor, what does  
11 that actually mean?

12 A. We have three claims of misdemeanor offenses in  
13 the State of Texas. We have a class C misdemeanor, a  
14 class B misdemeanor and a class A misdemeanor. A class  
15 C is punishable by fine only. And I believe the fine is  
16 \$500 or less. A class B is punishable by up to six  
17 months in a county correctional facility and a fine, I  
18 think \$2,000 or less. And then a class A misdemeanor is  
19 punishable by up to one year in a county correctional  
20 facility and a fine of \$4,000 or less.

21 Q. So class C and class E, they non-criminal  
22 offenses?

23 A. We don't have a class E. Class B, as in Brava.

24 Q. Okay. Class B, is that a non-criminal offense?

25 A. No, sir, that's a criminal offense.

1 Q. So focusing on class C then, you previously  
2 testified that if there was a determination that it was  
3 a class C offense, it would be referred back to the  
4 referring agency?

5 A. Yes, sir.

6 Q. So would that then, be a non-criminal offense or  
7 is it just -- you tell me.

8 A. It's a criminal offense. However, it's only  
9 punishable by fine only.

10 Q. Okay. Would that be considered an ordinance  
11 under Texas law?

12 A. Ordinances passed by city councils or county  
13 commissioner's courts are also potential class C's only.  
14 They don't involve jail time.

15 Q. And those would also be referred back if they  
16 came to your office?

17 A. We wouldn't investigate municipal or county  
18 ordinances.

19 Q. Okay. But local election officials could refer  
20 various allegations to you regarding election code  
21 violations; isn't that correct?

22 A. Local officials could refer election cases to us.

23 Q. Okay. Do they ever refer allegations that would  
24 fall under the class C or ordinance type violations?

25 A. Yes, they do.



1 Q. Okay. And those would not be investigated by  
2 your office?

3 A. Not now, no.

4 Q. Okay. When you say, "not now," let me understand  
5 that. Was there ever a time when you actually  
6 investigated class C or ordinance-type violations?

7 A. When -- in some of these referrals that come into  
8 our office, they include a whole host of allegations.

9 Q. Okay. Including class Cs?

10 A. Including class Cs. And so if we were already  
11 there investigating other offenses, we would address the  
12 class C, but we would not initiate a case just off of a  
13 class C.

14 Q. Okay. That's understandable. All right. And so  
15 turning back to, I believe it's Exhibit 587, with the  
16 four indictments, that was indictments for chapter 86,  
17 and that's by mail ballot or fraud; is that correct?

18 A. That's correct.

19 Q. And that would not have included voter  
20 impersonation?

21 A. It potentially could have.

22 Q. But again, the press release indicates that the  
23 violations apply to chapter 86?

24 A. The press release does say that they were  
25 indicted for mail-in ballot, yes.

1 Q. And so when you keep -- you testified several  
2 times that it potentially could have. What do you mean  
3 by that?

4 A. I mean that one of the schemes of conduct that we  
5 have seen in mail-in ballot fraud, and examples by  
6 Melva Kay Ponce, is that she impersonated her mother.  
7 And some cases, some of the mail-in ballot case that we  
8 examined, campaign workers will obtain a blank ballot  
9 from the voter and then cast those ballots as if they  
10 were the voter.

11 Q. And again, that's through the by mail ballot  
12 system?

13 A. That is correct.

14 Q. And that would not have, as I understand your  
15 testimony, been covered by -- if SB 14 was implemented?

16 MR. SWEETEN: Objection; calls for  
17 speculation.

18 A. That is also correct.

19 Q. (By Mr. Gear) And your answer was?

20 A. No, it would not.

21 Q. Okay. And I'm sorry if I got off track. Can you  
22 tell me, did you testify to what the conviction was, if  
23 any?

24 A. I got the -- I got the first two down. The final  
25 two Isabel Lisa Rice Gonzales pled no contest. And was,

1 on two counts of possession of an official ballot or  
2 carrier envelope of another, received one year  
3 adjudication, a \$500 fine and 12 months community  
4 supervision. Josefina Suarez also pled guilty to one  
5 count of illegally possession of an official ballot or  
6 carrier envelope of another, received one year  
7 adjudication, a \$500 fine and was sentenced to 12 months  
8 community supervision.

9 Q. What does deferred -- retrial diversion mean?

10 A. Pretrial diversion is an agreement between the  
11 defense attorney and the prosecuting attorney to some  
12 sort of alternative punishment without any finding of  
13 guilt.

14 Q. So in the case of Ms. Garza, Ms. Flores,  
15 Ms. Gonzales, there was no finding of guilt?

16 A. With Garza and Flores, they both accepted a  
17 pretrial diversion so there was no court finding.

18 Q. And then for Ms. Gonzales?

19 A. She plead no contest.

20 Q. Which is not an admission of guilt, correct?

21 A. Correct.

22 Q. And for Ms. Suarez, she pled guilty?

23 A. That's correct.

24 (Exhibit No. 588 was marked.)

25 BY MR. GEAR:

1 Q. Showing you what's been marked as 588. Take your  
2 time and then identify that document for me, please.

3 A. Okay, sir. This document appears to be a press  
4 release that was issued in Friday -- on Friday  
5 January 13, 2006 by the office of the attorney general.

6 Q. Okay. And do you see the individual who was  
7 indicted in this press release?

8 A. Yes, sir, I do.

9 Q. You say the name for the record?

10 A. There were actually two persons indicted in this  
11 case. That would be Anita Baeza and Trinidad  
12 Villalobos.

13 Q. Okay. So starting with Ms. Baeza, indicates that  
14 she's a 68-year old mother of the sheriff's officer  
15 candidate Jeffery Baeza. Can you tell me what the  
16 allegation is for her?

17 A. This move involved mail-in ballot fraud.

18 Q. And I just say for the record, you refer to your  
19 spread sheet?

20 A. Correct.

21 Q. So again, this is mail-in ballot fraud?

22 A. Yes, sir. In the 2006 primary election. No.  
23 I'm sorry. Incorrect. The 2004 primary election.

24 Q. And there was another individual that you  
25 indicated, Villalobos?

1 A. Yes, sir. Trinidad Villalobos.

2 Q. And can you tell me what the allegation for that  
3 was?

4 A. Also mail--in ballot fraud.

5 Q. From the same election?

6 A. Referring to my spread sheet, it was the 2004  
7 primary election yes, sir.

8 Q. So both were the 2004 primary election. Can you  
9 tell me generally what the allegations of this  
10 indictment were?

11 A. This again, goes to persons who were assisting in  
12 the application for mail-in ballots during the early  
13 voting in that election. And then also, once early  
14 voting started assisted in either the completion of the  
15 ballot or the handling of the ballot.

16 Q. And if I'm correct, these would have been under  
17 chapter 86, dealing with mail-in ballot fraud?

18 A. Yes, sir 86006.

19 Q. And do you know what the outcome of these  
20 indictments were?

21 A. Trinidad Villalobos was found guilty by a jury on  
22 four counts of possession of mail-in ballot or carrier  
23 of another. She received ten days in jail. And she was  
24 sentenced to six months of probation. And then Anita  
25 Baeza accepted six months of pretrial diversion.

1 Q. And again, neither of those dealt with voter  
2 impersonation. Or let me put it a different way so it's  
3 easier for you to understand, perhaps. Both of those  
4 dealt with chapter 86 of the election codes?

5 A. Yes, sir, that's what they were charged with.

6 Q. And neither of them pled to a charge of voter  
7 impersonation?

8 A. That's correct, sir.

9 Q. Okay. It also says at the bottom of, I believe  
10 Exhibit 588, that in December, four individuals were  
11 indicted for illegally possessing and transporting  
12 election ballots following the 2005 ISD election in, is  
13 it Nueces County?

14 A. Yes, sir, that's correct.

15 Q. And that's what we've previously referred to in  
16 your testimony?

17 A. Yes, sir, the 2005 Robstown independent school  
18 district election. On the chart, it's listed as the  
19 2005 school district election.

20 Q. Okay. And it also says, the paragraph underneath  
21 that attorney general obtained a guilty plea from Bee  
22 County woman accused of voter fraud. And the Bee County  
23 woman this is referring to would be Melva Ponce, is that  
24 accurate?

25 A. Yes, sir. Melva Kay Ponce.

1 Q. Okay. So far is, it fair to say that all of  
2 these violations dealt with by mail ballot fraud?

3 MR. SWEETEN: Objection; asked and answered.  
4 Objection; compound. You can answer.

5 A. These all involved mail-in ballot fraud, which  
6 could potentially include voter impersonation.

7 Q. You keep indicating that, but these were charged  
8 under chapter 86, correct?

9 MR. SWEETEN: Objection; argumentative.

10 BY MR. GEAR:

11 Q. Well, were they charged under chapter 86?

12 A. They were charged under chapter 86. Yes, sir.

13 Q. Chapter 86 does not include voter impersonation,  
14 correct?

15 A. Well Melva Kay Ponce was charged with voter  
16 impersonation.

17 Q. But it was through the by mail ballot system?

18 A. That's correct.

19 Q. And again, I believe you testified that that  
20 would not have been prevented if SB 14 was in place?

21 MR. SWEETEN: Objection; calls for  
22 speculation.

23 BY MR. GEAR:

24 Q. You can answer.

25 A. I don't believe it would have.

1 (Exhibit No. 589 was marked.)

2 BY MR. GEAR:

3 Q. Showing you what's been marked as Exhibit 589.  
4 Take a second to look at this, please.

5 A. Okay, sir.

6 Q. Can you tell me what this?

7 A. Sir, appears to be a press release issued by the  
8 Texas Attorney General's office regarding a training  
9 initiative our office was conducting.

10 Q. And the date of the press release?

11 A. Wednesday January 25, 2006.

12 Q. And before we talk about this, I would like to  
13 talk about your spread sheet. From -- the SIU was  
14 established in 2005, correct?

15 A. Yes, sir.

16 Q. And what month in 2005?

17 A. I want to say June.

18 Q. June of 2005. So between June 2005 to  
19 January 25th of 2006, how many referrals did the OAG's  
20 office receive?

21 A. I'm sorry. Could you repeat that one more time?

22 Q. Between June of 2005, the establishment of SIU,  
23 to January of 2006, the date of this press release, how  
24 many referrals were received by the OAG office? And can  
25 you tell that based on your spread sheet?



1 A. Yes, sir I could tell the referral that we  
2 received from the SOS.

3 Q. Okay. And how many referrals were those?

4 A. To January 2006?

5 Q. Yes, sir.

6 A. Six, sir, in the Secretary of State's office.

7 Q. And I believe that you said -- do one of these  
8 spread sheets show the other referrals?

9 A. Yes, sir, it does.

10 Q. And which portion of the spread sheet or which  
11 Bates stamp number would that be?

12 A. My Bates stamp number is partially cut off.

13 Q. And I apologize for that.

14 A. But it would start on Page 6 with a title heading  
15 selection code referrals of the office of the  
16 attorney general -- August 2, 2002 to present.

17 Q. What's the Bates stamp number on the bottom?

18 A. I have, it starts with TX 0005632.

19 Q. And the top is election code referrals to the  
20 office of the attorney general, prosecutions revolved,  
21 or am I looking at the wrong one?

22 A. I believe you're looking at the wrong one. It  
23 would be election code referrals to the office of the  
24 attorney general, August 2, 2002 to the present, Page 6.  
25 It was published 3/9/2012.

1 Q. All right. And so I believe your testimony was  
2 there were six referrals from the Secretary of State's  
3 office. Between that time period, how many from other  
4 sources?

5 A. I wouldn't be able to determine this off the  
6 spread sheet.

7 Q. How would you make that determination then?

8 A. I would have to go back and look at the call for  
9 service.

10 Q. Okay. Does this give you a general ball park of  
11 the number of referrals?

12 A. I would say yes, because there were only two  
13 elections that occurred in -- based off this document in  
14 2005.

15 Q. Okay. And so how many referrals are we talking  
16 about then, in a general ball park basically?

17 A. It would be two.

18 Q. Two. So we're talking about a total of seven  
19 referrals from the date of the establishment of the SIU  
20 to the date of this press release, which is January 25,  
21 2006. Is that fair to say?

22 A. I believe I said there were six referrals from  
23 the Secretary of State's office.

24 Q. Okay.

25 A. And then there appears to be two from other

1 sources.

2 Q. Eight?

3 A. Eight.

4 Q. Okay. Turning your attention back to 589,  
5 indicates that, "the Attorney General Greg Abbott  
6 launches initiative training -- training initiative to  
7 identify, prosecute, prevent voter fraud." Was that  
8 initiative launched in 2005 or was it launched in 2006?

9 A. It was initiated in late 2005 and finalized in  
10 the first part of 2006.

11 Q. Okay. And so the initiative -- what did the  
12 initiative involve? And you can refer to 589 if you  
13 would like to.

14 A. It involved developing, first of all, identifying  
15 geographical regions in the State of Texas where the  
16 office had previously investigated and prosecuted  
17 allegations of election misconduct. It involved the  
18 development of a law enforcement outreach training  
19 program. And then it involved scheduling and conducting  
20 training to law enforcement officers in Texas.

21 Q. Before we get into the various categories, were  
22 there training materials produced or created as a result  
23 of this initiative?

24 A. Yes, sir.

25 Q. And were those training materials specific to the

1 different agencies that you were focusing on or was  
2 there just one general training -- source of training  
3 material?

4 A. Just one source of training.

5 Q. Okay. And were these training materials turned  
6 over or provided to the different agencies that the  
7 training was conducted?

8 A. I believe a -- I believe a copy of the PowerPoint  
9 presentation would have been provided as an instructor  
10 note -- or class notes.

11 Q. Who created the PowerPoint presentation?

12 A. It was a combined effort of multiple  
13 investigators.

14 Q. Including yourself?

15 A. Yes.

16 Q. Were you in charge of the ultimate message or the  
17 material that was produced in the PowerPoint  
18 presentation?

19 A. No, I was not in charge at the time.

20 Q. Now, this training initiative in Exhibit 589, it  
21 indicates that it targeted 44 key counties that either  
22 have a history of voter fraud or the population of which  
23 exceeds 100,000. Do you see that?

24 A. Yes, sir.

25 Q. Can you tell me, as of this date, how many

1 different counties have been provided training by the  
2 attorney general's office?

3 A. As of today's date?

4 Q. As of today's date.

5 A. I couldn't -- I don't know.

6 Q. More than 44 counties?

7 A. I don't recall.

8 Q. Okay. And just to be fair, and I'm trying to  
9 understand this initiative. You were the lead  
10 investigator of the supervisor of the SIU, correct?

11 A. At the time I was the lieutenant and Greg Lucas  
12 was the captain over the unit.

13 Q. Okay. Would you have been involved in any  
14 aspects of the training?

15 A. Yes, I was involved in some of the training.

16 Q. And that would have been to go out into the field  
17 and provide the training?

18 A. Yes, sir.

19 Q. All right. And how many investigators were  
20 involved in providing training?

21 A. I don't recall.

22 Q. Do you have a general idea of the number of  
23 investigators?

24 A. It would just be a guess. And it would be,  
25 perhaps ten.

1 Q. Okay. And so when we're talking about 44  
2 counties and populations of 100,000 or more, can you  
3 tell me the different types of agencies that were  
4 targeted?

5 A. We conducted a total of, I believe, approximately  
6 80 presentations through out the state. And in those  
7 presentations would have been police departments,  
8 sheriff's departments, Texas highway patrol, local  
9 district attorney investigators or county attorney  
10 investigators or anybody who was a Texas peace officer.

11 Q. Would that have involved local DAs or local  
12 county attorneys as well?

13 A. Yes, sir.

14 Q. What about election officials?

15 A. No, sir.

16 Q. So local election officials were not invited to  
17 the training?

18 A. This was a TCLEOSE, which is our State law  
19 enforcement regulatory agency. It was designed to be a  
20 peace officer presentation for training on election code  
21 offenses.

22 Q. Was there a training initiative established for  
23 local election officials?

24 A. No, not that I'm aware of.

25 Q. Okay. And maybe I should be clearer on that.

1 Through the STU or through the OAG's office, was there a  
2 training established for local election officials?

3 A. No, sir.

4 Q. Do you see in the fourth paragraph again, where  
5 it's talking about 44 key counties including 18 cities  
6 where the attorney general has previously investigated  
7 or prosecuted alleged election code violations, do you  
8 see that paragraph?

9 A. Yes, sir.

10 Q. The 44 counties contain 78 percent of eligible  
11 registered voters in Texas. Do you see that?

12 A. Yes, sir.

13 Q. Any reason to dispute that?

14 A. No, sir.

15 Q. Underneath it indicates that, "earlier this  
16 month, two Reeves County women were indicted on charges  
17 of illegally possessing and transporting election ballots  
18 of several voters." Do you see that?

19 A. Yes, sir.

20 Q. Looking at your spread sheet, can you identify  
21 who the two women were?

22 A. That would be Anita Baeza and Trinidad  
23 Villalobos.

24 Q. And you testified to that already, correct?

25 A. Yes, sir.

1 Q. Okay. So is this training initiative still in  
2 place?

3 A. No, sir.

4 Q. And I believe I asked you what the number of  
5 counties that actually received training was, and I  
6 can't recall your answer?

7 A. I don't recall.

8 Q. And so generally would it have been -- how long  
9 did this training initiative last?

10 A. About a month.

11 Q. Were there any other versions of this training  
12 initiative that were put in place after this particular  
13 training initiative? We're talking about, I believe  
14 between 2005 and 2006.

15 A. No, sir.

16 Q. And the answer is no, no other training?

17 A. No other training initiatives.

18 Q. Okay.

19 (Exhibit No. 590 was marked.)

20 BY MR. GEAR:

21 Q. Go ahead and take a look at Exhibit 590. When  
22 you've had a chance we'll talk about it.

23 A. Okay, sir.

24 Q. Okay. The fourth paragraph, "and the fraud  
25 continues since last summer. My office has been



1 involved in several voter fraud cases across the state."  
2 Are there any -- from 2002 to 2006, March 1st 2006 the  
3 date of this article, are there any additional voter  
4 fraud prosecutions or convictions that you're aware of,  
5 based on this spread sheet?

6 A. I think there were three additional persons  
7 charged with election misconduct.

8 Q. And which three are you referring to?

9 A. Willie Howard Ray, Jamillah Johnson and Melinda  
10 Hunter.

11 Q. And they're in -- is it Bowie County?

12 A. Bowie County.

13 Q. Bowie County. Thank you. So let's talk about  
14 them real quick. Can you tell me what the allegation  
15 for Willie Ray, Jamillah Johnson and Melinda Hunter are?

16 A. Yes, sir. This case was referred by the  
17 Secretary of State's office.

18 Q. Okay.

19 A. It involved the 2004 primary election. And the  
20 allegations were unlawfully obstructing a poll watcher,  
21 unlawfully witnessing the application of more than one  
22 application, unlawful assistance, security of ballots,  
23 ballot boxes and envelopes.

24 Q. And would this have been a charge under chapter  
25 86 or chapter 64?

1           A. These -- the allegations involved multiple  
2 chapters of the Texas election code.

3           Q. Okay. And would any of these allegations have  
4 involved a charge of voter impersonation?

5           A. The mail-in ballot applications and the unlawful  
6 assistance could lead to potential illegal voting  
7 charges under 64. However, only charges that were filed  
8 were under chapter 86.

9           Q. Okay. So is it fair to say there were no charges  
10 filed under chapter 64 for any of the individuals who  
11 were indicted that you just identified?

12          A. That is correct.

13          Q. And ultimately, was there a conviction?

14          A. Willie Ray pled to one count of possession of an  
15 official ballot or carrier envelope of another, which is  
16 a class B misdemeanor. She received a fine. I'm sorry.  
17 I'm having a hard time reading it.

18          Q. It's small print.

19          A. And then Jamillah Johnson was -- received  
20 six months deferred adjudication and a \$200 fine.

21          Q. And again, that's not a criminal conviction?

22          A. No. For the purpose it's not a final conviction.

23          Q. Okay.

24          A. And then Melinda Hunter received six months  
25 pretrial diversion.

1 Q. And again, these were by mail ballot violations?

2 A. Yes, sir, 86006 is possession of a mail-in  
3 ballot.

4 Q. Turning your attention back to Exhibit 590, there  
5 are a number of different discussions of indictments  
6 here. Reeves County, the mother of the 2004 primary  
7 candidate I believe you already testified that, correct?

8 A. Yes, sir.

9 Q. Nueces County, the four women allegedly targeting  
10 elderly voters during last year's local school board  
11 election, I believe you testified to that?

12 A. Yes, sir.

13 Q. Hardeman County commissioner pled guilty to  
14 illegally collecting mail-in ballots during the 2004  
15 election. And that would have been Johnny Wayne Akers,  
16 correct, for Hardeman County?

17 A. Yes, sir.

18 MR. SWEETEN: Bruce, we're getting close to  
19 1:15, so if you get to a logical stopping point.

20 MR. GEAR: Did you want to go to 1:30?

21 MR. SWEETEN: Well, we were going to try  
22 to -- we've got to be somewhere at 1:30. It's short,  
23 but yeah. Just, I mean, I don't want to stop you I'm  
24 just letting you know.

25 MR. GEAR: I'll finish this and then we can

1 take a break.

2 MR. SWEETEN: Sure. That's fine.

3 BY MR. GEAR:

4 Q. There's another indication here about, "I know  
5 local prosecutor's are dealing with voter fraud, too.  
6 The week before Christmas." And they talk about  
7 Hidalgo. Did I pronounce that correct?

8 A. Yes, sir. Hidalgo County.

9 Q. "Hidalgo County district attorney's office  
10 obtained indictments against nine people in connection  
11 with the McAllen City election in May of 2005." Would  
12 that be included on your spread sheet?

13 A. No, sir. It's included on our spread sheet in  
14 referrals.

15 Q. Okay.

16 A. But not in prosecutions.

17 Q. So is this one that you would have worked in  
18 conjunction with the local prosecutor. How does that  
19 work?

20 A. Yes, sir. The Secretary of State's office  
21 referred it to us, as well as the Texas Ranger assigned  
22 to that jurisdiction. And then also the district  
23 attorney. So all three requested assistance.

24 Q. Okay. Can you tell me on the referrals where  
25 these nine individuals would be identified?

1 A. I would only have listed it once.

2 Q. Okay.

3 A. And it would be listed on Page 1 of election code  
4 referrals to the office of the attorney general,  
5 August 2007 to present. And it would be Page 1. And it  
6 would be Hidalgo 2005 municipal election with the SOS  
7 date of 6/16/2005. And the office was method of  
8 returning marked ballot, unlawful assistance and  
9 assisting voter.

10 Q. And that would have included the nine individuals  
11 that the allegations pertained to?

12 A. Yes, sir.

13 Q. And this is -- the allegation at least is, method  
14 of returning marked ballots, unlawful assistance,  
15 assisting voter, illegal voting. Can you tell me what  
16 the result of these allegations were?

17 A. I believe nine defendants were charged with a  
18 variety of those offenses.

19 Q. Okay.

20 A. By the grand jury. They were indicted. And the  
21 district attorney prosecuted that case.

22 Q. Go ahead.

23 A. I believe each of the indictments were  
24 subsequently dismissed by the local district attorney in  
25 the interest of justice or for insufficient evidence.

1 Q. Okay. So there were no convictions regarding  
2 this matter?

3 A. I don't believe so.

4 Q. Okay.

5 MR. GEAR: I think this is a good place to  
6 stop.

7 MR. SWEETEN: Okay. Very good.

8 (Brief recess.)

9 BY MR. GEAR:

10 Q. Back on the record. Back from lunch. All right.  
11 I think we ended with Exhibit 590, which takes us up to  
12 March 1st of 2006. So I just want to ask you some  
13 general questions about your spread sheet. From 2002 to  
14 March 1st of 2006, how many referrals, total, were  
15 received in the office of the Attorney General?

16 A. From 2002 to 2006?

17 Q. Yes, sir.

18 A. 18 SOS referrals.

19 Q. And what about other?

20 A. That's not going to be as good of a number  
21 because I can only distinguish elections prior to 2006,  
22 so on the others, it would be two elections.

23 Q. So 20 referrals between 2002 to 2006. Is that a  
24 fair estimate?

25 A. Yes, sir.

1 Q. Okay. Out of those 20 referrals -- and that  
2 would have included referrals from the Secretary of  
3 State's office, as well as other sources as you've  
4 testified here. How many of those dealt with voter  
5 impersonation?

6 A. The one that I can definitely say dealt with  
7 voter impersonation would be Melva Kay Ponce, through  
8 Bee County.

9 Q. And we've talked about that, correct?

10 A. Yes, sir. On the other cases that involved  
11 mail-in ballot fraud, there were no other persons  
12 charged with voter impersonation.

13 Q. Okay. Which leads me to my next question  
14 between -- other than Ms. Ponce who, I understand your  
15 testimony about. Between 2002 and 2006, were there any  
16 charges of voter impersonation?

17 A. No, sir.

18 Q. Were there any investigations of voter  
19 impersonation?

20 A. When we examine allegations of mail-in ballot  
21 fraud, we sometimes have allegations that the voter  
22 didn't cast the mail-in ballot and that someone assisted  
23 them with their mail-in ballot or took their blank  
24 mail-in ballot. So there are potential cases that were  
25 there.

1 Q. And those, again, would have been under  
2 chapter 86, not chapter 64 because they're dealing with  
3 mail-in ballots?

4 A. If you had a suspect who assisted a voter with  
5 the mail-in ballot application and also the completion  
6 of the ballot, and marked the ballot contrary to the  
7 voter's intent or marked the ballot as if they were  
8 themselves the voter as in the case of Melva Kay Ponce,  
9 that would be under 64.

10 Q. Okay. And again, the question I have for you is,  
11 that would have fallen under the by mail ballot system,  
12 however?

13 A. Yes. You can commit illegal voting by -- you can  
14 commit illegal voting by -- in the early voting mail-in  
15 ballot portion, early voting polling place or actually  
16 on election day itself.

17 Q. Okay. And so from 2002 to 2006 dealing with  
18 early voting at the polling place, were there any  
19 charges, referrals or allegations of voter  
20 impersonation?

21 A. No, sir.

22 Q. Were there any prosecutions of voter  
23 impersonation, either early voting, by mail ballot or at  
24 the polling place between 2002 and 2006?

25 A. By our office or the State of Texas as a whole?



1 Q. Start with your office.

2 A. No, sir.

3 Q. Are you aware of any in the State of Texas as a  
4 whole?

5 A. No, sir. Our data only represents what was  
6 referred to the Attorney General's office.

7 Q. Okay. And as I understand your testimony, the  
8 referrals come from a variety of sources?

9 A. That's correct.

10 Q. So going forward from 2006 to the end of 2011,  
11 can you tell me how many referrals you received in your  
12 office between 2006 to 2011?

13 A. If you give me just a moment.

14 Q. Sure. I know it's going to take a little time.  
15 Just for the record, I would indicate that the witness  
16 is referring to his spread sheet.

17 A. Did you say the end date was 2011?

18 Q. Yes, sir.

19 A. 100 from the Secretary of State's office.

20 Q. And other?

21 A. Okay. Since 2006, we each received approximately  
22 160 allegations of misconduct in elections in that time  
23 frame.

24 Q. Total?

25 A. 168 from other sources outside of the SOS.

1 MR. ROSENBERG: 168?

2 A. 168.

3 Q. So total would be, if I'm counting correctly, 268  
4 referrals between 2006 to 2011. Is that yes?

5 A. Of elections from that time frame -- in that time  
6 frame, yes, sir.

7 Q. And I assume you -- counting on your spread sheet  
8 you counted to the end of 2011?

9 A. I counted to 2010, 2009, 2008, 2007 elections.

10 Q. And you counted 2011 elections, correct?

11 A. The -- on the other category in the other sources  
12 outside of the SOS, we didn't have any in 2011.

13 Q. Okay. Did you have any in 2011 for SOS?

14 A. Yes, sir. But I didn't count those.

15 Q. You did not count those. Go ahead and count  
16 those as well?

17 A. Eight SOS referrals in 2011.

18 Q. So what does that take our total to, 268 plus  
19 eight?

20 A. 268 plus eight?

21 Q. Uh-huh.

22 A. 276.

23 Q. 276. And that would represent all of the  
24 referrals from any source to the OAG's office from 2006  
25 to the end of 2011?

1 A. Yes, sir, I believe so.

2 Q. Did I state that right, because I'm just trying  
3 to make sure I'm clear on it?

4 A. There are some, if I may clarify?

5 Q. Please.

6 A. There are some elections, which I'm unable the  
7 determine exactly what election actually it involved.  
8 There were complaints about unspecified elections. And  
9 I did not include those.

10 Q. Okay. And where in the spread sheet are you  
11 referring to?

12 A. If you would look at Page 11 of the election code  
13 referrals office of the Attorney General, 2002 to the  
14 present.

15 Q. Okay.

16 A. Undetermined in Nueces County, undetermined in  
17 Duval County.

18 Q. I see what you're referring to. So there are two  
19 referrals that are undetermined?

20 A. Well, on other pages there are as well, sir.

21 Q. Why don't you go ahead and add those in as well.  
22 As far as referrals are concerned. I see one on  
23 Page 10.

24 A. Looks like it would be, maybe five.

25 Q. Five?

1 A. Yes, sir.

2 Q. So adding those five to the 276, what is your  
3 total?

4 A. It would be 281.

5 Q. So the 281 referrals, as I understand it,  
6 represent all of the referrals from any source from 2006  
7 to 2011, including undetermined election dates?

8 A. That were received by the Texas Attorney  
9 General's office, yes, sir.

10 Q. Okay. Out of those 281, can you tell me how in  
11 were actually investigated?

12 A. I can tell you that when I reviewed the number of  
13 investigations that we conducted in the period from 2004  
14 to present, the number is 186.

15 Q. The present, including 2012?

16 A. Correct, sir.

17 Q. Okay. So let's go with that for a minute. You  
18 said from 2002 or 2004 to the present?

19 A. 2004 to the present.

20 Q. Okay. So from 2004 to the present, kind of  
21 throws off our other estimate of referrals, but there  
22 have been 186 that have been investigated?

23 A. Yes, sir.

24 Q. How many of those have resulted in -- of the 186  
25 resulted in charges?

1 A. We referred 62 cases for prosecution.

2 Q. Out of the 186 from 2004 to the present, how many  
3 of those referrals dealt with voter impersonation?

4 A. I have to go and count them on the spread sheet.

5 Q. Please do.

6 MR. SWEETEN: Can you read the question back  
7 while he's doing that?

8 (Requested question was read.)

9 BY MR. GEAR:

10 Q. I should be clear, how many of those were  
11 allegations of voter impersonation?

12 MR. SWEETEN: Same thing. Do you understand  
13 what he wants?

14 A. Of the prosecutions?

15 Q. (By Mr. Gear) Of the -- of the 186 that were  
16 received as -- I'm sorry. I'm confused myself now.

17 MR. SWEETEN: Investigations.

18 BY MR. GEAR:

19 Q. Yeah. Of the 186 investigations, how many of  
20 those were allegations of voter impersonation?

21 A. On the spread sheet that I maintain, voter  
22 impersonation is included in the allegation of illegal  
23 voting. I would have to go through and count those as  
24 well.

25 Q. Help me understand when you're talking about

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1 "illegal voting," that's under chapter 64?

2 A. Yes, sir.

3 Q. And chapter 64 has a multitude of different  
4 potential violations.

5 A. Yes, sir.

6 Q. And is illegal voting a general term or is it a  
7 specific allegation.

8 A. It is a -- it is an offense title that includes  
9 four different elements of -- four different ways to  
10 commit that offense title.

11 Q. Okay. Is there any way to distinguish between  
12 allegations of illegal voting versus allegations of  
13 voter impersonation?

14 MR. SWEETEN: On the spread sheet, Bruce?

15 MR. GEAR: Well, I'm asking him in general.

16 BY MR. GEAR:

17 Q. I'm just trying to understand how this is  
18 inputted.

19 A. It only is inputted if that clearly is  
20 articulated in the referral source. In many cases, the  
21 Secretary of State's office just refers a case to us and  
22 says here is an allegation of -- a violation of 64012,  
23 illegal voting. And some other referrals they break it  
24 down exactly how the offense is committed, either  
25 through voter impersonation, voting twice, being an

1 ineligible voter. In other cases, especially those that  
2 are referred to the DA or other persons, they don't  
3 break that down in the referral document. So this is  
4 created off that referral document.

5 Q. Okay. So trying to move forward from the  
6 referral, because we're talking about 2004 to the  
7 present, correct?

8 A. Yes, sir.

9 Q. At some point is there a charging decision from  
10 the OAG's office?

11 A. Yes, sir.

12 Q. How many of the -- this might be one step before  
13 that. But how many of the 186 referrals were  
14 investigated as voter impersonation? And let me narrow  
15 that down even farther. Were investigated as voter  
16 impersonation at the polling place. Can you identify  
17 that?

18 A. I can identify that the defendants who have been  
19 charged for that are Jack Carol Crowder out of Harris  
20 County. Reyna Almanza out of Hidalgo County. Lorenzo  
21 Antonio Almanza out of Hidalgo County. And I believe  
22 Mary Comparin out of Bexar County.

23 Q. So as I understand your testimony, there are four  
24 individuals that have been charged with voter  
25 impersonation between -- are you limiting this testimony

1 to 2004 to the present or are you going from 2002 to the  
2 present?

3 A. I'm going to from 2004 to the present.

4 Q. Okay. And so since we're going down this road,  
5 were there any charged with voter impersonation at the  
6 polling place between 2002 to the present? And I  
7 understand there are four that you already identified.  
8 So I'm trying to get the total number of individuals  
9 that were charged with voter impersonation at the  
10 polling place between 2002 to the present.

11 A. Of the cases that were referred to our office and  
12 the Attorney General's office, yes. I believe there are  
13 four.

14 Q. Okay.

15 A. Total.

16 Q. And those are the four you just identified?

17 A. Yes, sir.

18 Q. Would you say that the majority of the referrals  
19 that come to your office are based on the by mail ballot  
20 system?

21 A. I wouldn't say majority, no.

22 Q. What percentage would you say?

23 A. I know that illegal voting represents -- I'm  
24 sorry. I did the numbers. I remember that 133 of the  
25 Secretary of State's referrals, approximately 60 dealt



1 with illegal voting of any type.

2 Q. That's out of the 186 referrals?

3 A. Well, the 133 would be part of the 186.

4 Q. Okay. Let's see if we can clarify this.

5 A. Sorry.

6 Q. We're getting into the numbers now. So you said  
7 133 and 186 would be part -- 133 would be part of 186.  
8 What time period are we talking about?

9 A. Of the spread sheet, would be 2002 to present.

10 Q. And so the total number of referrals between 2002  
11 to the present that were received by the OAG's office  
12 would have been what number?

13 A. The total number of SOS referrals in that time  
14 frame was 133.

15 Q. Okay. And that's where the 133 came from. And  
16 then the total number of other referrals?

17 A. I believe that number was 2 --

18 Q. You gave me a number earlier of 276?

19 A. Yeah. That would be pretty close.

20 MR. SWEETEN: I'm sorry. What is 276?

21 MR. ROSENBERG: Can we clear this up or  
22 we'll go crazy.

23 MR. GEAR: Yeah, I know. Right. I know.

24 MR. ROSENBERG: Do you mind if I just -- to  
25 get the numbers here's --

1 MR. SWEETEN: I don't mind.

2 MR. GEAR: Go ahead. That's fine.

3 CLARIFYING EXAMINATION.

4 BY MR. ROSENBERG:

5 Q. The 133 include -- from the Secretary of State,  
6 includes 100 from 2006 to 2011; am I correct? Just from  
7 the Secretary of State.

8 A. I believe the question earlier was 2006 to  
9 present or to 2011?

10 MR. GEAR: Yes.

11 A. And I think that number I gave was, I believe  
12 100.

13 Q. (By Mr. Rosenberg) Right. The 133 is from 2002  
14 to the present just from the Secretary of State?

15 A. I believe that's correct, sir.

16 Q. There were an additional 178 referrals that  
17 weren't from the Secretary of State from 2002 forward,  
18 which were based on two between 2002 and 2006?

19 A. In 2005 there were two referrals from another  
20 source.

21 Q. 168 between 2006 and 2011. Non-referrals -- let  
22 me say, not from the Secretary of State, not referrals  
23 from the Secretary of State.

24 A. As I can determine.

25 Q. Eight from the 2011 election?

1 A. Those would be SOS referrals.

2 Q. Those were within the SOS. Okay. And five that  
3 were undetermined?

4 A. Yes, sir, I believe so.

5 Q. So the total referrals from 2002 to 2000 -- to  
6 date are 301?

7 A. The number that I have in my head is, I think  
8 around 320.

9 Q. Okay. So we're missing some. That's the best I  
10 can do. I turn it back.

11 MR. SWEETEN: Ezra, you were supposed to  
12 clear this up.

13 BY MR. ROSENBERG: I tried. I tried.

14 FURTHER EXAMINATION

15 BY MR. GEAR:

16 Q. So 320 is the number that is in your head, would  
17 represent all referrals from any source that were  
18 received from the OAG's office. Is that accurate?

19 A. One more time. I'm sorry.

20 Q. The 320 number that you said you had in your head  
21 would be reflective of all of the referrals from any  
22 source that were received by the OAG's office regarding  
23 election code violations?

24 A. Yes, sir.

25 Q. And that would have been from 2002 to the

1 present, 2012?

2 A. Yes, sir.

3 Q. And so let's start from there since we've got  
4 that number down. So we've got 320 total referrals. Of  
5 those 320, how many were investigated?

6 A. That's where the number -- I have to clarify. I  
7 have 186 investigations from 2004 to present. And the  
8 reason for that is the report system that we used. I'm  
9 able to query our report system that only goes back to  
10 2004.

11 Q. So then based on your testimony, is it fair to  
12 say that you do not know the number of investigations  
13 between 2002 up to 2004? Let me ask that a different  
14 way. Are there files maintained somewhere that would  
15 tell us what happened between 2002 and 2004 regarding  
16 referrals?

17 A. I believe that the records retention for election  
18 code offense, I believe is like five years. And so I  
19 only can give you a number of the number of  
20 investigations that we conducted based on our report  
21 writing system that goes from 2004 to present.

22 Q. So again, not to belabor the point, I'm just  
23 trying to make sure I understand your testimony. If I  
24 was to ask you or anyone within your office to go back  
25 and look at either electronic files or paper files for

1 investigations between 2002 to 2004, you would not be  
2 able to do that?

3 A. I don't know.

4 Q. Is it fair to say that in preparation for this  
5 deposition you didn't look at any files, either  
6 electronic or paper, between 2002 up to 2004?

7 A. I was able to query all of our election cases  
8 which was through our system -- which showed me cases  
9 from 2004 to present.

10 Q. So is that a yes or no? I'm sorry.

11 A. I did not look at any files -- investigative case  
12 files from 2002 to present -- or to 2004.

13 Q. So we're still working with the 320 number, which  
14 would be reflective of 2004 to the present, correct?

15 A. No. Actually that number would be -- that time  
16 frame -- the 320 encompasses --

17 Q. 2002?

18 A. 2002 to the present.

19 Q. Now, I'm sorry. I talked over you. That was  
20 2002 to the present?

21 A. Yes, sir.

22 Q. I think we're getting there. All right. So of  
23 the 320 referrals from all sources to the OAG's office  
24 from 2002 to the present, how many of those were  
25 investigated?

1 A. I believe 186.

2 Q. Okay. Of those 186 referrals that were  
3 investigated from 2002 to the present, how many of those  
4 dealt with voter impersonation at the polling place?

5 A. I can clearly identify four.

6 Q. And you've done that already on the record?

7 A. Yes, sir.

8 Q. Other than those four, are you aware of any  
9 others?

10 MR. SWEETEN: And you're asking allegations,  
11 just so I'm clear.

12 MR. GEAR: No. I'm asking about  
13 investigations.

14 MR. SWEETEN: Investigations. Okay.

15 A. There are more. But those four are the ones that  
16 were charged. I do not know the number off the top of  
17 my head for the other ones that weren't charged.

18 Q. (By Mr. Gear) And as we've -- as you've  
19 testified before, that a referral can come into your  
20 office and not result in a charge, correct?

21 A. That's correct.

22 Q. And that they can come in your office and not be  
23 supported by, either the facts of the law, would that be  
24 accurate?

25 A. That's correct.

1 Q. Which would be a reason not to charge?

2 A. That's correct.

3 Q. Okay. So -- and now you've used the term "those  
4 are the four," and you're talking about Mr. Crowder,  
5 Mary Comparin and can you remind me of the other two  
6 names?

7 A. Reyna Almanza and Lorenzo Antonio Almanza. I  
8 think his name was junior.

9 Q. Okay. Let's first start with Mr. Crowder. Can  
10 you tell me when that investigation occurred? For the  
11 record, the witness is referring to his spread sheet.  
12 And I just direct your attention to Page 3 of the Texas  
13 code of referrals to the office of Attorney General  
14 prosecutions resolved, Bates stamped TX 00056820. I  
15 believe it's the third.

16 A. Right. This case was referred to our office by  
17 the Secretary of State's office.

18 Q. And when was it referred?

19 A. It would have been -- the SOS document date was  
20 1/14/09. I mean, the date of the referral from the  
21 Secretary of State's office was January 14, 2009.

22 Q. 2009. What election --

23 A. I'm sorry.

24 Q. Go ahead.

25 A. It involved the 2008 and 2000 -- primary and

1 general elections.

2 Q. From the spread sheet referring to Page 3, I see  
3 it indicates the primary election. Where do you pick up  
4 the general election?

5 A. Because that's the actual election that he was  
6 charged for illegally voting in and impersonating in.

7 Q. In the general election?

8 A. The actual referral indicates there were deceased  
9 voters voting both the general and primary elections.

10 Q. And is that indicated in the spread sheet?

11 A. It's indicated -- yes, sir. In the referral  
12 spread sheet.

13 Q. And which page is that?

14 A. That would be Page 3 of the referral sheet,  
15 spread sheet.

16 Q. Can you tell me which --

17 A. The -- eight from the bottom. And it says,  
18 "Harris 2008, primary and general elections, 1/14/09,  
19 deceased voters voting."

20 Q. And how do you know that this deals with  
21 Mr. Crowder?

22 A. Because that -- I just know that that's the  
23 referral that we got which we initiated the  
24 investigation at which Jack Carol Crowder was  
25 subsequently charged.



1 Q. Okay. And so can you tell me what the facts are  
2 for that case?

3 A. A group of citizens had obtained voter  
4 registration records and then compared that to the  
5 actual voting records in these two elections. And they  
6 had come up with a list of names that they suspected  
7 were potential dead persons voting. They then presented  
8 that information to the Secretary of State's office who  
9 evaluated and then sent it to us for investigation.

10 Q. And the group of citizens that you're referring  
11 to?

12 A. I'm sorry. I don't know their name.

13 Q. Was it an actual group that made this referral or  
14 was it -- or are you just referring to that, generally a  
15 group of citizens?

16 A. I believe the SOS referral itself actually says  
17 the name of the group.

18 Q. Is that indicated anywhere in your spread sheet?

19 A. No, sir.

20 Q. Do you know if that name would have been the King  
21 Street Patriots?

22 A. No, I don't believe that was it.

23 Q. But as you sit here today, you don't know the  
24 name of the group?

25 MR. SWEETEN: Objection' asked and answered.

1 A. No, sir, I do not know the name of the group.

2 Q. (By Mr. Gear) So they conducted their own, I  
3 guess informal investigation, and referred it on to the  
4 Secretary of State's office. Can you tell me what the  
5 facts are of the case?

6 A. Yes, I can. Jack Carol Crowder -- Jack Carol  
7 Crowder's father died preceding the election and his  
8 son, Jack Carol Crowder also, used his voter  
9 registration card to vote in that election. The  
10 investigation revealed that at no time did Jack Carol  
11 Crowder attempt to register to vote, either through the  
12 signing up for his Texas driver's license or by actually  
13 completing a voter registration card. And he was  
14 interviewed and advised that he didn't complete a voter  
15 registration card. He thought that he had asked to be  
16 registered on his Texas driver's license.

17 Q. So let me flesh out the facts now. Jack Carol  
18 Crowder, the individual who voted, has the same last  
19 name as his father who was deceased?

20 A. That is correct.

21 Q. And the same first name as well?

22 A. That's correct.

23 Q. Is there any difference in the Jack Carol  
24 Crowder, Jr., Jack Carol Crowder the third --

25 A. I think Jack Carol Crowder the actual suspect is

1 the third.

2 Q. Okay. And do you know if the father has -- what  
3 is the suffix on his last name?

4 A. I don't remember.

5 Q. Okay. And you said that he presented some form  
6 of identification when he voted?

7 A. No, sir. He presented his deceased father's  
8 voter registration certificate.

9 Q. And is that indicated anywhere here on your  
10 spread sheet?

11 A. No, sir.

12 Q. And how would I know -- how would I determine  
13 exactly what happened on the day of that election? Are  
14 there documents, reports that are available that would  
15 clarify that?

16 A. Yes, sir. The combination form that was used at  
17 the polling place indicates the kind of documentation  
18 that the voter used to sign up at the polling place. It  
19 generally indicates if they presented a voter  
20 registration certificate or some other form of ID. I  
21 believe the charging document itself, the indictment  
22 that Jack Carol Crowder -- it actually mentions that he  
23 used his father's voter registration certificate to cast  
24 a ballot in that election as well.

25 Q. Did you actually conduct this investigation?

1 A. No, but I assisted in it.

2 Q. What was the basis of the group believing or  
3 attempting to determine that Mr. Crowder may have been  
4 using a deceased voter certificate, in this case his  
5 father's?

6 A. I don't know what the group -- or why they did  
7 what they did.

8 Q. And he was ultimately indicted?

9 A. Yes, sir.

10 Q. What was he indicted for?

11 A. The Harris County district attorney's office  
12 indicted him for illegal voting, for impersonating his  
13 deceased father.

14 Q. Was there a resolution to the case?

15 A. Yes, sir, there was.

16 Q. And what was the resolution?

17 A. He pled guilty to one count of fraudulent use of  
18 identifying information and received one-year deferred  
19 adjudication and a \$200 fine.

20 Q. Fraudulent use of -- did you say of information?

21 A. Fraudulent use of identifying information.

22 Q. What chapter would that have been under?

23 A. That's actually in our Texas penal code.

24 Q. And can you explain that for those of us who  
25 don't know?

1           A. Yes, sir. If a person possesses identifying  
2 information of another and uses it with intent to harm  
3 or defraud, they can be charged under the penal code as  
4 well. And identifying information under Texas law would  
5 be a unique identifying number to that person, such as a  
6 Texas driver's license, voter identification number, a  
7 Texas voter ID, a social security number or a date of  
8 birth.

9           Q. So as I understand it, there was no conviction  
10 under chapter 64, which as I understand it, identifies  
11 voter impersonation?

12          A. No, sir. He pled guilty to possession and use of  
13 identifying information.

14          Q. And again, would that have been under chapter 64?

15          A. No, sir. That's a penal code offense.

16          Q. This may be a silly question, but I'm just trying  
17 to understand the range of this. What would be the  
18 basis of pleading under the penal code versus pleading  
19 under the election code?

20          A. It would be speculation on my part. I don't know  
21 why Harris County made the decision to reduce the  
22 offense. But illegal voting is a third degree felony  
23 and -- which is punishable by up to two to 10 years in  
24 the State penitentiary. And a person who has no  
25 criminal history whatsoever, might be charged for a

1        lesser offense for reduced punishment based on the fact  
2        that they had no prior criminal history?

3            Q.    Okay.    So it was the result of a plea agreement,  
4        essentially?

5            A.    I believe so, yes, sir.

6            Q.    Do you know what the punishment or the penalty  
7        was for his violation?

8            A.    He pled to one year deferred adjudication and a  
9        \$200 fine.    So with that one year deferred adjudication  
10       he probably had to report to a community supervision  
11       department for the period of a year.

12          Q.    So the deferred adjudication means there was no  
13       actual conviction?

14          A.    At the successful completion of a deferred  
15       adjudication there's no final conviction; that's  
16       correct.

17          Q.    Did he successfully complete his period of  
18       deferred adjudication?

19          A.    I'm sorry.    I don't know that, standing here  
20       today.    I don't know.

21          Q.    If he didn't successfully complete it, what would  
22       have happened?

23          A.    If he didn't successfully complete it, he would  
24       have been adjudicated and he could be forced to serve  
25       the entire year in the county jail.

1 Q. Are you aware of whether or not Mr. Crowder ended  
2 up serving any time in jail?

3 A. I'm not aware.

4 Q. So the end result in this is, if I understand  
5 your testimony, if he successfully completed the  
6 deferred adjudication, then he would not have been  
7 convicted of a crime?

8 A. That's correct.

9 Q. You also said Mary Comparin. Can you tell me,  
10 based on your spread sheet, when that referral came into  
11 the office?

12 A. This referral is going to be found in the other  
13 category, as it was referred by law enforcement. And so  
14 I don't have a date in the spread sheet that says the  
15 actual date of the referral.

16 Q. What page are you referring to, if any?

17 A. If you'll just give me a moment I'll look for it.

18 Q. Sure.

19 A. I believe I'm referring to Page 9 of the election  
20 code referrals of the office of Attorney General, 2002  
21 to present. That says, "Bexar multiple primary and  
22 general elections, other illegal voting."

23 Q. And again, how do you know that this particular  
24 referral deals with Mary Comparin?

25 A. Because the DPS trooper who discovered this case

1 referred it directly to me.

2 Q. Which county did this come out of?

3 A. Bexar County.

4 Q. And again, we don't know which election?

5 A. It was multiple elections.

6 Q. Do you know the year of these elections?

7 A. If I could explain the facts, I probably could.

8 Q. Go ahead, please.

9 A. Mary Comparin was discovered by the Texas  
10 Department of public safety, as through the Texas  
11 driver's license image system had developed multiple  
12 identities in her own name. And the DPS trooper who  
13 discovered this also discovered that in the -- in those  
14 identities, she was voting in multiple elections. Every  
15 election that basically took place she would vote two to  
16 three times.

17 Q. You're saying, "every election that took place."  
18 I'm trying to understand the time frame in which you're  
19 talking about. Do you know the elections she allegedly  
20 voted in? And I understand the spread sheet to say,  
21 "multiple primary and general elections." But do you  
22 know the actual elections that she allegedly voted in?

23 A. I know what we charged her for. And I believe it  
24 was the -- based off the spread sheet, she was charged  
25 for voting in the 2008 general election.



1 Q. You said, "2008 general"?

2 A. Yes.

3 Q. And you refer to your spread sheet. Do you see  
4 Ms. Comparin's name on here anywhere?

5 A. Yes, sir. It's on Page 1 of charges pending  
6 resolution.

7 Q. Would this charge still be pending at this point?

8 A. Yes, sir, it is.

9 Q. And she was charged with illegal voting?

10 A. Yes, sir, in that election.

11 Q. And is this set for trial? Can you tell me where  
12 it is in the process?

13 A. I think she's currently been found by the court  
14 as -- I don't know exactly the term. But she's --

15 Q. Give it a shot.

16 A. Mentally incompetent.

17 Q. That would be a legal term. Do you know if this  
18 case -- if there's any intention to proceed to trial in  
19 this case?

20 A. I think that we have to -- the State has to find  
21 that she is competent through a court before it can  
22 proceed to trial. I think they have regular settings to  
23 determine that.

24 Q. And have you gone through that process?

25 A. I personally haven't. But I believe that the

1 prosecutor assigned has.

2 Q. What was the end result of that?

3 A. I think she's been found incompetent.

4 MR. SWEETEN: Bruce, I'm going to, at this  
5 point, I'm going to designate any discussion of an  
6 active case, Ms. Comparin's case as under the protective  
7 order, just this section related to questioning on her.

8 BY MR. GEAR:

9 Q. Let's move forward to the next -- there's two  
10 left, correct?

11 A. Yes, sir, I believe so.

12 Q. And did you say Almanza?

13 A. Almanza.

14 Q. Almanza. Can you tell me when that referral came  
15 into your office?

16 A. I believe it was in 2009.

17 Q. Can you tell me what page you're referring to on  
18 your spread sheet?

19 A. It would be Page 10 of the election code  
20 referrals of the office of the Attorney General, 2002 to  
21 the present. And it would be the first entry, Hidalgo  
22 2009 school district election, voter -- illegal voting.

23 Q. Is this case still pending?

24 A. There are actually two cases. One of the cases  
25 is pending.

1 Q. Okay. Well, let's break that out. You said  
2 there's two cases. Did both of them deal with the 2009  
3 school district election?

4 A. Yes, sir, they did.

5 Q. And they both deal with Mr. Almanza?

6 A. Lorenzo Antonio Almanza, Jr.

7 Q. Junior, okay.

8 A. And his mother, Reyna Almanza.

9 Q. And what are the facts for that case or those  
10 cases, I guess properly stated?

11 A. Lorenzo Almanza and his mother went into the  
12 Progresso school district to vote in that election.  
13 Lorenzo Almanza had already voted days prior to that  
14 election and used his brother's voter registration  
15 certificate to cast a second ballot in that election.  
16 His brother was an ineligible voter because he was  
17 incarcerated in San Antonio for a felony offense at the  
18 time.

19 Upon presenting the card to the elections  
20 official, a poll watcher who was present recognized the  
21 name of the person who was presenting themselves to vote  
22 with the card and said that's not that person. The  
23 election judge actually contacted the county elections  
24 department to determine what to do because he wasn't  
25 familiar what to do in such a circumstance. And the

1 elections department told the election judge at the  
2 polling place, since he's presented a lawful voting  
3 registration certificate he must be allowed to vote.

4 The poll watcher was emphatic that he wasn't the  
5 person and Reyna Almanza, the mother, interjected  
6 herself and vouched for his identity as being Lorenzo  
7 Antonio -- or Orlando Almanza, his brother.

8 Q. So Reyna Almanza, the mother, has not been  
9 charged with voter impersonation?

10 A. No. She was charged as a party to and illegal  
11 voting impersonation.

12 Q. So as far as -- as for as Mr. Almanza, that's  
13 still an allegation at this point, correct?

14 A. Yes, sir. He was indicted and he is currently  
15 awaiting trial.

16 Q. Do you know the trial date?

17 A. No, sir. He was subsequently rearrested for a  
18 federal violation. And so I think he's in the custody  
19 of the US government at this time.

20 Q. Is there a scheduled trial date that you're aware  
21 of?

22 A. No, not that I'm aware of.

23 Q. When you say, "he's in the custody of the US  
24 government," is he in state, out of state?

25 A. I believe he is, the last check I heard, he was

1 in the South Texas federal detention facility.

2 MR. SWEETEN: Again, because this is an open  
3 case, I'm going to designate this portion of the  
4 testimony, the specifics about it as eyes only,  
5 protective order.

6 BY MR. GEAR:

7 Q. At this point I think we went through all four.  
8 But let me just if back to the mother. And her first  
9 name, again, was?

10 A. Reyna Almanza.

11 Q. Okay. So she was charged as a party to, but did  
12 not actually, based on the allegations, cast a vote in  
13 someone else's name. Is that accurate?

14 A. Yes. She did not cast a ballot in that election.

15 Q. She didn't vote at all in that election?

16 A. I don't know at this time, sir.

17 Q. Did she attempt to vote at all during that  
18 election?

19 A. I'm not sure she's a US citizen.

20 Q. I don't know if that answers the question. Are  
21 you aware of whether or not she attempted to vote?

22 A. I didn't look. I don't know.

23 Q. So in summary, I believe you said the total from  
24 2002 to the present is 320 referrals, correct?

25 A. Yes, sir, I believe that's correct.

1 Q. And out of those 320 referrals, there have been  
2 four charges of voter impersonation at the polls, if I  
3 understand your testimony correctly?

4 A. Yes, sir. I believe there have been four charges  
5 at the polling place.

6 Q. And actually, one of those charges was a party  
7 to, and that person did not, in fact, attempt to cast a  
8 ballot as you know, as you sit here?

9 A. I don't know if she did or not.

10 Q. Out of the four charges, how many convictions  
11 have there been for voter impersonation at the poles?

12 MR. SWEETEN: Does that include pleas or are  
13 you talking about convictions only by jury?

14 MR. GEAR: Let's make it a general question  
15 including pleas.

16 BY MR. GEAR:

17 Q. How many of the four charges have actually  
18 resulted in a conviction, including a plea of voter  
19 impersonation at the polling place?

20 A. The only person that comes to mind is Reyna  
21 Almanza as voter impersonation.

22 Q. Has that gone to trial?

23 A. Oh, yes, sir.

24 Q. What was the result of that trial? I'm sorry. I  
25 might have glazed over that one?

1           A. She was convicted by a jury in Brooks County on  
2           November 16, 2011 and sentenced to two years in prison,  
3           which was suspended for five years of probation. And as  
4           a condition of the punishment, she was ordered to serve  
5           90 days in jail, and as a condition of the probation  
6           just pay \$313 in court costs.

7           Q. Which page of the spread sheet are you referring  
8           to?

9           A. I'm referring to the election code referrals  
10          office of the Attorney General's prosecution resolve.  
11          And I'm referring to Page 4, Reyna Almanza is the third  
12          from the bottom.

13          Q. I apologize. Can you tell me the facts of this  
14          case?

15          A. That is the mother who interjected herself on  
16          behalf of her son who was committing the voter  
17          impersonation.

18          Q. And she was charged as party to?

19          A. Yes, sir. And if I may clarify one thing.

20          Q. Please.

21          A. I left off Delores McMillian. She, too, was  
22          charged with voter impersonation or attempted voter  
23          impersonation.

24          Q. And she appears on Page 4 of your spread sheet  
25          for --

1 A. Yes, sir.

2 Q. Prosecutions resolved?

3 A. Yes, sir.

4 Q. Can you tell me, just so we're clear, Delores  
5 McMillian, was the election that the referral came from  
6 is the 2010 primary election?

7 A. In Dallas County. Correct, sir.

8 Q. In Dallas County. Actually, Dallas  
9 County/Rockwell as I see it here?

10 A. The two counties, under Texas State law, when you  
11 prosecute an election code offense, you can take it to  
12 an adjoining county.

13 Q. Okay. And so can you tell me exactly what the  
14 charges were for Delores McMillian?

15 A. She was charged for attempted voter imperson --  
16 she was charged for attempted illegal voting, voter  
17 impersonation.

18 Q. All right. And can you tell me what the facts of  
19 this case are?

20 A. Delores McMillian and her mother, who is now  
21 deceased, are both elections officials working at a  
22 polling place in Dallas County during that election.  
23 Both Delores and her mother used other voter's  
24 information to cast ballots on behalf of those -- on  
25 behalf of these other people.



1 Q. Are we talking about at the polls or by mail?

2 A. At the polls.

3 Q. Okay. I'm not clear on the facts. You say,  
4 "they used other people's information to cast ballots at  
5 the poles." Can you clarify that for me?

6 A. Yes. Their voter -- their voter registration  
7 numbers.

8 Q. And how did they -- how did they do this?

9 A. I don't know off the top of my head.

10 Q. Is there a file that would clarify that?

11 A. Yes, sir. There's an investigative file that  
12 would be able to clarify that.

13 Q. And was there a plea in this case?

14 A. Yes, sir, I believe so.

15 Q. And what was the plea?

16 A. She pled guilty to one count of attempted illegal  
17 voting and served -- was sentenced to one year probation  
18 and paid \$227 in court costs.

19 Q. So you said they used other people's voter  
20 registration -- their registration information. Am I  
21 saying that correctly?

22 A. Yes, sir, I believe so.

23 Q. How many people are we talking about that were  
24 involved in this?

25 A. I believe Delores used one person's identity.

1 And I do not remember how many her deceased mother used.  
2 She died during the course of the investigation.

3 Q. So that allegation was never proven?

4 A. She was never charged for it.

5 Q. Do we know the name of the voter that Delcres  
6 allegedly used?

7 A. I don't know the name today.

8 Q. Do you know how she obtained the voter  
9 registration information or the voter's information?

10 A. I'm sorry. I don't know right now.

11 Q. And when you say, "attempted illegal voting," do  
12 you know if she actually cast a ballot?

13 A. It was actually stopped by a fellow elections  
14 worker.

15 Q. And can you tell me the facts behind that?

16 A. No, sir, I can't. Other than to say that I  
17 believe the other elections worker discovered that these  
18 names appeared on the list prior to the opening of the  
19 polling place.

20 Q. When you say, "the list," are you talking about  
21 the voter registration polls?

22 A. No, sir. The combination form at each polling  
23 place. And in Texas when a voter presents themselves to  
24 vote, there is a combination form which election  
25 officials complete and then the voter has to sign. And

1       you either have to provide the certificate or some other  
2       form of identification for that purpose. So I'm  
3       referring to the combination form.

4       Q. So in the case where you have an election  
5       official using -- impersonating another voter, is that  
6       something that would be prevented by -- if SB 14 was  
7       implemented?

8               MR. SWEETEN: Objection; calls for  
9       speculation. You can answer.

10      BY MR. GEAR:

11       Q. You can answer.

12       A. I don't know.

13       Q. But when you've got the election official who is  
14       in charge of attempting to identify and prevent voter  
15       impersonation, actually engaging in the voter  
16       impersonation, who, if anyone, is left to prevent that  
17       from happening?

18               MR. SWEETEN: Same objection.

19       A. I don't really know.

20       Q. (By Mr. Gear) Delores pled guilty to illegal  
21       voting. Do you know what chapter she entered a plea  
22       under?

23       A. 64012.

24       Q. So was the ultimate conviction voter  
25       impersonation?

1           A. It's attempted illegal voting, voter  
2 impersonation. I'm sorry. If I could clarify. The  
3 judgments -- the judgments sometimes say the entire  
4 title of the offense or sometimes just give the title.  
5 In other words, illegal voting chapter 64C12. Didn't  
6 break it down to Section 1, an ineligible voter,  
7 Section 2, voting twice in an election, Section 3,  
8 marking a ballot contrary. So I believe the judgment  
9 says attempted illegal voting.

10          Q. Are there any of the four that you've actually  
11 identified here today that actually have a judgment that  
12 indicates voter impersonation?

13          A. I would have to looking back at the judgments and  
14 sentence.

15          Q. Of the five. I'm sorry. Of the five you added  
16 additional?

17          A. I'm sorry, sir. I would have to go back and look  
18 at the judgments and sentences.

19          Q. So as you sit here today, you don't know?

20          A. Yes, sir.

21          Q. Why don't we take a quick break if you don't  
22 mind?

23               MR. SWEETEN: In the break, can we get a  
24 copy of this? So I can look at it, too.

25               MR. GEAR: Sure.

1 (Brief recess.)

2 BY MR. GEAR:

3 Q. Back on the record. Does the OAG's office have  
4 primary jurisdiction or direct jurisdiction over voter  
5 impersonation cases?

6 A. I believe it has, going back to what I kind of  
7 testified earlier, it depends on the type of election  
8 that's conducted. A single jurisdiction versus a  
9 multi-jurisdiction case. I think the attorney general's  
10 office, under the Texas election code, can advise a  
11 district attorney that they would be conducting the  
12 prosecution. I think that the attorney general's  
13 office, under the chapter 273, can direct a DA or county  
14 attorney to assist in the prosecution of the case as  
15 well.

16 Q. So as I understand your testimony, out of all of  
17 the referrals that have been received by the OAG's  
18 office, there have been five that were in some form  
19 voter impersonation?

20 A. Yes, sir.

21 Q. At the poles; is that correct?

22 A. Yes, sir.

23 Q. Are you aware of any investigations of voter  
24 impersonation that did not -- that were not referred to  
25 the OAG's office?

1 A. Yeah. I'm only aware of cases that were referred  
2 to our office.

3 Q. And again, when we're talking about referrals,  
4 we're talking about from multiple sources?

5 A. Yes, sir.

6 Q. Including police departments, correct?

7 A. Yes, sir.

8 Q. Local election officials?

9 A. Yes, sir.

10 Q. Local DA's and prosecutor's?

11 A. Yes, sir.

12 Q. Are you aware of any convictions of voter  
13 impersonation other than the five cases that we've --  
14 you've talked about here today, on the record?

15 A. Yeah. I don't really think there is a way to  
16 know because I don't think -- you know, DA's offices  
17 across the state don't report their -- don't report  
18 their prosecutions to our office. So I don't know any  
19 other cases in Texas.

20 Q. Well, let me explore that for a second. At some  
21 point there was an initiative that reached out to at  
22 least 44 different counties or populations over 100,000  
23 or more, correct?

24 A. Yes, sir.

25 Q. And did you -- "you," meaning your office. Did

1       you create a referral system with the 44 different  
2       counties? Did you set up a way to communicate with them  
3       regarding voter fraud in the State of Texas?

4       A. If my memory serves me correctly, we took a look  
5       at the referrals that our office had and then looked at  
6       them geographically and divided the state based upon the  
7       council of government divisions. Because our hope was  
8       to utilize the council of governments to help facilitate  
9       the training.

10       Q. And so just so I'm clear, on the record, "the  
11       council of governments," what is that?

12       A. Council of government is -- I don't know if it's  
13       an actual political subdivision of the State. But it is  
14       a -- it is a group of counties and municipalities that  
15       work together through a council of governments to share  
16       resources.

17       Q. And when you talked -- or when you discussed the  
18       initiative, was there any specific training given to the  
19       council of governments?

20       A. No. When I mentioned the council of governments,  
21       we were hoping to -- council of governments provide a  
22       lot of law enforcement training throughout the state.  
23       And many of them actually have their own police  
24       academies.

25       Q. Okay.

1           A. Which are State subsidized. So we were hoping to  
2           utilize their academies to help facilitate the training.

3           Q. And did you?

4           A. Yes, sir.

5           Q. So as you sit here today, other than the five  
6           that you've testified about, the five voter  
7           impersonation cases that you've testified about, you're  
8           unaware of any others?

9           A. Yes, sir. I don't have any knowledge of any  
10          cases that the local DA's have prosecuted.

11          Q. Have you attempted to determine if there's been  
12          any prosecutions by local DA's regarding voter  
13          impersonation claims?

14          A. No, sir.

15          Q. Have you attempted, and "you," being your office,  
16          have you attempted to set up a system by which the local  
17          DA's and prosecutors report to your office regarding  
18          voter claims in general?

19          A. No, sir, not that I'm aware of. I would say that  
20          it's statutorily required that if a DA's office is going  
21          to do an investigation, that they notice the Secretary  
22          of State's office if it involves a case.

23          Q. Okay. And so when the Secretary of State's  
24          office is noticed, that may, in fact, result in a  
25          referral to your office?



1 A. No, it wouldn't.

2 Q. Can you tell me what the process is?

3 A. If a local DA advises the Secretary of State's  
4 office that they're going to investigate and prosecute a  
5 case, it wouldn't generate a referral. Because we limit  
6 to those cases that -- the SOS, I believe, would refer a  
7 case to us if the local jurisdiction wasn't going to  
8 handle it.

9 Q. Would -- I understand that it may not necessarily  
10 generate a referral. Would it generate communication  
11 between the Secretary of State's office and your office  
12 regarding that potential prosecution?

13 A. No, sir, I don't believe so.

14 (Exhibit No. 591-592 was marked.)

15 BY MR. GEAR:

16 Q. I'm showing you what's been marked as  
17 Exhibit 591. Take a look at it and then once you've had  
18 a chance to review it, we can talk about it.

19 A. Do you want me to read the whole thing.

20 Q. No. And actually, why don't I ask you the  
21 question. Have you seen this report before?

22 A. No, sir.

23 Q. Do you know what this is?

24 A. It's titled the House Committee on elections  
25 Texas House of representative interim report. A report

1 to the Texas House of -- to the House of  
2 Representatives, 81st Legislature.

3 Q. And I direct your attention to Page 37, where it  
4 says prosecution rates and fraud in Texas.

5 MR. SWEETEN: Counsel, is this excerpted.  
6 This isn't the full thing; is that right.

7 MR. GEAR: I do not believe it's the full  
8 thing.

9 MR. SWEETEN: So we've got an excerpted.  
10 Okay. Page 37, now. Is that what you said.

11 MR. GEAR: Yes.

12 BY MR. GEAR:

13 Q. Who is Eric Nichols?

14 A. Eric Nichols used to be the deputy for the office  
15 of the Attorney General.

16 Q. Have you ever had any communications with Eric  
17 Nichols regarding voter fraud?

18 A. Oh, yes, sir. He would have been my supervisor.  
19 He supervised all criminal justice divisions within the  
20 office of the attorney general.

21 Q. And he supervised prosecutions of voter fraud  
22 claims?

23 A. Yes, sir.

24 Q. And when would he have been your supervisor, if  
25 you can give me the dates?

1           A. I believe he would have been the Deputy Attorney  
2           General for the office of the attorney general from 2010  
3           to 2007, is my best guess.

4           Q. Were you aware that he provided testimony in 2008  
5           before the House Committee on elections?

6           A. I wasn't aware that he provided testimony to the  
7           House Committee.

8           Q. Were you aware that he provided testimony  
9           regarding prosecution rates of voter fraud in the State  
10          of Texas?

11          A. I know that he provided testimony to the Senate  
12          Committee in 2009.

13          Q. Okay. Not so much asking you about the -- have  
14          you seen this document. I really want to focus on the  
15          substance of his testimony and ask you a few questions  
16          about that. On the -- in the second paragraph,  
17          prosecution rates and fraud in Texas, do you see where  
18          it says, "that what the committee found is most election  
19          fraud happened in Texas occurs with the absentee or  
20          mail-in ballot system." Do you agree with that  
21          statement?

22          A. I would -- actually, I don't know that I can  
23          totally agree with that statement.

24          Q. Why not?

25          A. Because that's just the offenses that we have

1 detected and prosecuted.

2 Q. So specifically dealing with referrals to the  
3 OAG's office, would you agree that the majority of the  
4 referrals deal with the by mail ballot system? And I  
5 understand that there could be a variety of violations  
6 within that system.

7 A. To me, a majority means more than 50 percent.  
8 And I don't know that the main-in ballot fraud  
9 represents 50 percent or more of our election code  
10 referrals. I do believe that it is a significant  
11 portion of the referrals.

12 Q. Well and you -- you maintain the spread sheets?

13 A. Yes, sir.

14 Q. You update it whenever a referral comes in, and I  
15 believe you testified to monthly?

16 A. Yes, sir.

17 Q. If you looked at your spread sheet, could you  
18 tell me what percentage of the cases involved deal with  
19 the by mail ballot system?

20 A. Yeah. I could go through and do a quick analysis  
21 or an analysis. I don't know how quick.

22 Q. Well, in looking at your spread sheet, could you  
23 give me a general number, percentage?

24 A. I would say it's probably close to 50 percent.  
25 It's not a majority, but it's close.

1 Q. Okay. And so the other 50 percent, what would  
2 you say that...

3 A. That comprises illegal voting as a whole. And  
4 then other types of poll place violations. And then  
5 election misconduct by actual elections officials,  
6 campaign finance violations, those kinds of things.

7 Q. So the charge of voter impersonation at the  
8 polling place, what percentage would you say that makes  
9 up of the 320 referrals that you've received in the  
10 CAG's office?

11 A. A small portion.

12 Q. Five to be exact?

13 A. Five.

14 Q. Do you see the very next paragraph, "another  
15 highly controversial topic brought up during the hearing  
16 was the debate of whether or not illegal aliens or  
17 illegal non-citizens were voting?" And again, that's  
18 Page 37.

19 A. Yes, sir.

20 Q. Were you aware of this controversy?

21 A. Yes, sir.

22 Q. Were you involved in any communications regarding  
23 the controversy that illegal aliens -- illegal  
24 non-citizens were voting?

25 A. Could you repeat that one more time?

1 Q. Were you involved in any communications regarding  
2 the controversy as to whether or not illegal aliens or  
3 legal non-citizens were voting?

4 MR. SWEETEN: Objection; foundation.  
5 Objection; scope. Go ahead. You can answer.

6 A. I guess you would have to ask me communications  
7 with who.

8 Q. (By Mr. Gear) Well, and that's why I  
9 intentionally stated it broadly. To find out if you  
10 were first involved in any communications regarding this  
11 topic. And then if it will help, I will narrow that  
12 down.

13 A. Our investigations have revealed non-citizens and  
14 illegal aliens casting ballots in elections.

15 Q. Okay. And so based on your referrals, can you  
16 tell me, out of the 320, how many dealt with  
17 non-citizens voting or illegal non-citizens voting?

18 A. I do know that -- I do know that in the Dallas  
19 2010 election that was referred to our office from the  
20 Secretary of State, there was a non-citizen who voted in  
21 that election. I do know that in the Debra Briseno  
22 case, which is a prosecution, that there were  
23 non-citizens who voted in that election. I am also  
24 aware that in the Hidalgo County elections that there  
25 were non-citizens who voted in those elections as well.

1 Q. And Hidalgo County, what time period are we  
2 talking about?

3 A. I want to say that was the 2008 time frame.

4 Q. Let's start with Hidalgo County 2008. Is that  
5 reflected in your spread sheet?

6 A. I believe that would be on Page 3 of the election  
7 code referrals office of Attorney General 2002 to  
8 present. And I believe it would be Hidalgo County  
9 2008 municipal election, unlawfully rejecting voters,  
10 illegal voting and unlawfully accepting voters.

11 Q. What are the facts of that case?

12 A. That was the City of Progreso municipal  
13 election. And our office assisted a portion of the  
14 investigation that was conducted by the local district  
15 attorney's office.

16 Q. What did the facts show?

17 A. I believe there was a Mexican national who voted  
18 in that election.

19 Q. And who was that, based on your spread sheet?

20 A. It's not one of our prosecutions. We just  
21 assisted in the investigation. It's not reflected in  
22 our spread sheet.

23 Q. And what was the end result of -- first of all,  
24 was that referred to your office?

25 A. It was referred to our office. However, the

1 district attorney's office was prosecuting it already.

2 Q. Did you work in conjunction with the district  
3 attorney's office on that investigation?

4 A. Yes, sir. We helped out on the mail-in ballot  
5 portion of that case because many of the mail-in ballots  
6 were outside Hidalgo County. We assisted them in  
7 interviewing voters and checking addresses in other  
8 parts of Texas.

9 Q. So again, and I'm sorry. I'm trying to  
10 understand what the facts are of this case. So did this  
11 case deal with a mail-in ballot system, if you know?

12 A. That I don't know. The ADA, I believe, told me  
13 that a non-citizen had voted in the election. I don't  
14 think she clarified whether it was in person voting or  
15 mail-in ballot fraud.

16 Q. And that was the allegation. Was there a  
17 conviction in this case?

18 A. I don't know.

19 Q. Were these cases dismissed?

20 A. I don't know.

21 Q. So as you sit here today, you don't know if -- do  
22 you know if those went into prosecution?

23 A. Yes, sir. I believe that -- I don't know for  
24 sure.

25 Q. And as you sit here today, you don't know the



1 extent of the facts involving those cases, correct?

2 A. No, sir. I only know a portion of the case.

3 Q. And they would not be reflected in your spread  
4 sheet?

5 A. No, sir.

6 Q. All right. Let's see. The other case that you  
7 mentioned was Dallas County in 2010?

8 A. Yes, sir.

9 Q. Was that referred to the OAG's office?

10 A. Yes, sir it was.

11 Q. And can you show me on the spread sheet where  
12 that is?

13 A. That would be on Page 4 of the election code  
14 referrals of the office of the Attorney General 2002 to  
15 the present. It would be, I believe was sixth case  
16 down. And it says, "Dallas 2010 primary elections.  
17 Unlawfully obstructing watcher. Illegal voting,  
18 unlawful assistance, failure to witness application,  
19 unlawfully witnessing more than one application.  
20 Providing false information on application, possession  
21 of mail-in ballots. Unlawful assistance in bribery."  
22 And the referral date was 4/20/2010.

23 Q. So I see it here. I don't see any names  
24 indicated on Page 4, as you're testifying to. Would it  
25 be in any other portion of your spread sheet?

1 A. No, sir. She was not prosecuted.

2 Q. So the allegation was not substantiated?

3 A. No, sir. She is a non-citizen. However, we  
4 didn't think that she had the mens rea. Because someone  
5 led her to believe that as a resident she could vote in  
6 an election.

7 Q. So tell me what the facts are. What did you  
8 find? Did you investigate the case?

9 A. I didn't personally. But one of my investigators  
10 did.

11 Q. And who was the investigator?

12 A. Sergeant Jennifer Bloodworth.

13 Q. And can you tell me what the facts of the  
14 investigation found?

15 A. Specific to that non-citizen or generally as a  
16 whole? Because it's a substantial case.

17 Q. Let's talk about the substantial case. And we're  
18 talking about, just so this is clear, we're talking  
19 about Dallas County, the 2010 primary election, correct?

20 A. Yes, sir.

21 Q. And there was one individual that was ultimately  
22 investigated?

23 A. No, sir. There were multiple individuals that  
24 were investigated. And those -- many of those  
25 individuals are indicated in the prosecution's and

1 charges pending spread sheet.

2 Q. Okay. So you seem to have in mind one  
3 individual?

4 A. Yes, sir.

5 Q. And you mentioned mens rea, which is, did not  
6 have the intent, essentially?

7 A. Correct.

8 Q. Okay. Can you tell me what the facts -- the  
9 overall facts are of the case that you're talking about?

10 A. Yes, sir. She was approached by someone who was  
11 canvassing her neighborhood. And she wasn't certain  
12 about when the time frame was, but that person assisted  
13 her in the completion of a mail-in ballot application --  
14 I'm sorry. Correction. Of a voter registration  
15 certificate.

16 Q. Okay.

17 A. And on that voter registration certificate,  
18 indicated that she had checked she was US citizen when  
19 indeed she was not. So therefore, the elections office  
20 processed her voter registration application and she was  
21 issued a voter registration certificate. And so she had  
22 voted in an election.

23 Q. And when you say that "she did not have the mens  
24 rea," can you tell me what you mean in the context of  
25 the facts?

1           A. Yes, sir. The actual person who helped her  
2 register was a deputy voter registrar who was sworn by  
3 the county to help her -- to help voters fill out their  
4 registration cards.

5           Q. Okay.

6           A. And the deputy voter registrar checked that she  
7 was a US citizen and told her that she could vote. And  
8 so she believed she actually could vote in an election.

9           Q. Do you know the name of the deputy registrar?

10          A. No, sir, I do not.

11          Q. And now, you seem to suggest that there were  
12 other individuals involved in this?

13          A. Yes, sir. This case was one of the largest cases  
14 that we have investigated over the years. It had  
15 multiple allegations. And we charged multiple  
16 defendants, Delores McMillian was part of this referral.

17          Q. Okay. And you've testified to Ms. McMillian?

18          A. Correct. Another defendant in the spread sheet  
19 who was identified during that investigation was Sylvia  
20 Medrano, whose case is currently pending?

21          Q. And that would be on page -- the first page of  
22 the exhibit?

23          A. Yes, sir.

24          Q. And Sylvia Medrano was charged with what?

25          A. Seven counts of illegal voting, ineligible voter.

1 Q. And would this be by absentee ballot?

2 A. I don't know for sure.

3 Q. Well, tell me what you know about the facts for  
4 Sylvia Medrano.

5 A. This case involves a very contentious justice of  
6 the peace election in the Dallas County area. I think  
7 the election was decided by a little more than 100  
8 votes. And a long serving justice of the peace was --  
9 lost the election to a challenger. The investigation  
10 revealed that many people who were family members and  
11 friends of the challenger had just changed their voter  
12 registration to addresses within the precinct for the  
13 purposes of registering to vote in just that election  
14 and to cast ballots.

15 Q. But as you sit here today, you don't know if it  
16 was ballots by mail or ballots cast in person?

17 A. I don't know specifically which voters cast in  
18 person. I do remember that a number of the family  
19 members went together to the polling place on the same  
20 day and voted in that precinct.

21 Q. And again, looking at the spread sheet, the  
22 charges are unlawfully obstructing a watcher, what does  
23 that mean?

24 A. A poll watcher is allowed to witness the  
25 activity. And I think each candidate who's running for

1 office in Texas can designate a poll watcher. And it is  
2 a criminal offense in the State of Texas for an  
3 elections official to obstruct the poll watcher from  
4 generally observing what kind of conduct is occur.

5 Q. Sylvia Mendrano was an election official?

6 A. No, sir, I don't believe so.

7 Q. Was she a candidate?

8 A. I don't believe she was a candidate in that  
9 election.

10 Q. But she's charged with unlawfully obstructing a  
11 watcher?

12 A. No, sir. I think you're looking at the  
13 allegation portion and not the actual charge.

14 Q. Sure. But as I understood your testimony,  
15 unlawfully obstructing a watcher is generally a charge  
16 or allegation that's levied against an election  
17 official?

18 A. Yes, sir. If I would clarify.

19 Q. Please.

20 A. When -- the design of the spread sheet is that we  
21 take all of the allegations that are contained in the  
22 referral for that specific election. So the spread  
23 sheet shows all of the allegations that were lodged in  
24 that case or in that referral.

25 Q. Against the individual?

1           A. Against -- in that election. And then what we do  
2           is we actually show that the actual charge -- I guess  
3           maybe I'm not making myself clear.

4           Q. Well, if I understood you correctly, you're  
5           telling me that there may be multiple defendants -- and  
6           we'll stay with Sylvia Medrano for a second. There may  
7           be multiple defendants in the allegations. Are all of  
8           the potential charges against all of the defendants?

9           A. No, sir.

10          Q. Okay. Then I didn't understand you.

11          A. If I can kind of explain the mechanics of how I  
12          do it. You know, I do have three books in the Excel  
13          spread sheet. And as somebody is charged, I cut and  
14          paste all of the allegations contained in the referral  
15          into the charging book so that it shows the county and  
16          all of the allegations that were in that election. And  
17          then the election itself and then the cause number of a  
18          charging instrument. And then the actual charge.

19          Q. So ultimately she was charged with four counts of  
20          illegal voting. Sorry. Looking at the wrong one. She  
21          was charged with seven counts of illegal voting?

22          A. Yes, sir.

23          Q. And you're not -- as you testify today, you're  
24          not saying that she voted seven times in a polling  
25          place?

1           A. I don't know how many times that she voted in a  
2           polling place.

3           Q. Is it fair to say that this charge is addressing  
4           the issue of by mail ballots?

5           A. I don't know if it was a poll place violation, in  
6           person voting or mail-in ballots.

7           Q. You don't know.

8           A. Not off the top of my head, no, sir?

9           Q. I believe you also said Ms. Briseno?

10          A. Yes, sir.

11          Q. Can you tell me what the facts of that were?

12          A. This case was referred to our office by the  
13          district attorney of, I believe it was Lavaca County.

14          Q. Port Lavaca?

15          A. Port Lavaca. And he requested investigative  
16          assistance from our office in determining allegations of  
17          illegal voting and misconduct in the election. It was a  
18          very heated contested election. And I think three  
19          candidates emerged with a very close margin in that  
20          election. I think there were about 19 votes that  
21          separated the three candidates. And I think Debra  
22          Briseno was the winning candidate.

23          Q. Can you tell me what the facts of the case are?

24          A. Debra Briseno signed up as a deputy voter  
25          registrar. So she assisted in the voter registration of



1 citizens in the county. She additionally registered  
2 non-citizens to vote during that election and informed  
3 them that they could indeed vote in that election  
4 despite the fact that they were not citizens in the US.

5 Q. And Ms. Briseno was the only one charged in that  
6 case?

7 A. That's correct.

8 Q. And was there a determination as to why not to  
9 charge the non-citizens who had registered?

10 A. Again, you have a person who is sworn as a deputy  
11 voter registrar by the elections department who the  
12 voters -- the non-citizens perceived to be as a  
13 representative of the government. At the time, she was  
14 actually a city council person for the City of Port  
15 Lavaca. So these voters believed that what they were  
16 telling -- what she was telling them, that they could  
17 vote in the election, they took at face value.

18 Q. And again, in this case there would have been no  
19 mens rea?

20 A. I believe that is why they were not charged in  
21 this case.

22 Q. Okay and so I believe we've gone through the  
23 cases where non-citizens were alleged to have voted,  
24 Dallas 2010, Ms. Briseno and Hidalgo County. Were there  
25 any others that you're aware of on these spread sheets?

1           A. I remember a case in Culberson County where  
2           allegations were made, but they were unsubstantiated.

3           Q. Did that result in an investigation?

4           A. Yes it did.

5           Q. Did it result in any charges?

6           A. No, sir, it did not.

7           Q. So other than the -- the three distinct cases,  
8           Dallas County, Ms. Briseno and Hidalgo, are you aware of  
9           any others?

10          A. No, sir. Not that resulted in criminal charges.

11          Q. So out of the 320 referrals that came into your  
12          office, are you aware of any others that alleged  
13          non-citizens voting?

14          A. Not of the cases that were referred to our  
15          office.

16          Q. Referring back to the 2008 report, page -- Page  
17          37, paragraph 3, after prosecution rates and fraud in  
18          Texas, it says, "through talking with our county  
19          election officials and other experts the committee found  
20          the chance of a legal alien -- of an illegal alien  
21          actually voting are very slim." Based on your  
22          experience as an investigator who's been in the OAG's  
23          office for -- since prior to 2005 and been with the SIU  
24          the entire time of its creation, would you agree with  
25          this statement?

1 MR. SWEETEN: Can you read the question  
2 back?

3 BY MR. GEAR:

4 Q. And I can try to pose it again. It was kind of a  
5 long, run-on question. Would you agree that based on  
6 your experience in the -- as an investigator and  
7 supervisor in the SIU, would you agree that the chance  
8 of an illegal alien actually voting in an election in  
9 the State of Texas, are very slim?

10 MR. SWEETEN: Objection; calls for  
11 speculation. You can answer.

12 A. I don't believe it's very slim. It all depends  
13 on the motivation to do so. Through my investigations  
14 over the years that I have worked with the Texas  
15 Attorney General's office, it has come to our attention  
16 that in some elections officials have told us, people  
17 working in the voter registration departments, that  
18 non-citizens have gotten voter identification cards to  
19 try to develop -- to try to validate -- to validate  
20 themselves inside Texas or the United States. That it  
21 is one of the precursor documents that they can obtain  
22 to try to obtain other things like a Texas driver's  
23 license, so they can remain here illegally.

24 So it really depends on the motivation. If the  
25 motivation to obtain a voter registration certificate is

1 simply to try to get documents, then I would say it is  
2 not very likely. But our investigations have also  
3 revealed in certain areas of the state, that voters are  
4 paid to vote. And they might be persuaded to vote in an  
5 election.

6 Q. (By Mr. Gear) Okay. And so let me break that  
7 down a little bit, because my question was voting. Is  
8 the chance slim? So I understand your testimony that  
9 there may be other motivations for them to obtain a  
10 voter registration card. But in your experience in the  
11 SIU and based on the referrals that you've seen, is the  
12 occurrence of an illegal alien or illegal non-citizen,  
13 is that type of referral rare to your office?

14 A. When I look at the 320 referrals that we have,  
15 the allegations of a non-citizens voting in an election,  
16 the number is small.

17 Q. And "small," meaning three distinct cases that  
18 you've identified here on the record?

19 A. Yes, sir. I can think of three to come to mind.

20 (Exhibit No. 593 was marked.)

21 BY MR. GEAR:

22 Q. Let me know when you've had a chance to review  
23 the document.

24 A. Yes, sir.

25 Q. Can you tell me what this is?

1 A. This appears to be an article out of the Dallas  
2 Morning News. It's dated May 18, 2008, and it's titled  
3 Abbott GOP Pressing For Required Photo ID.

4 Q. Do you see the paragraph that indicates,  
5 "Republicans say that the mere possibility of illegal  
6 voting merits changes. Particularly with the rising  
7 illegal immigration population and that the photo ID  
8 requirement is not onerous." Do you see that?

9 A. I'm sorry. Okay. Yes, sir, I see that.

10 Q. As a supervisor in the SIU, were you aware of any  
11 debate regarding the rise of -- rising illegal immigrant  
12 population in reference to photo ID?

13 A. You mean globally as a --

14 Q. State of Texas.

15 A. As a citizen of the State of Texas or...

16 Q. Yes. Well, no. As your -- as the supervisor in  
17 the SIU, were you aware of this debate?

18 MR. SWEETEN: Assumes facts not in evidence.  
19 Objection.

20 A. I'm aware of the debate as a whole of this issue.  
21 But not in the special investigations unit.

22 Q. (By Mr. Gear) Were you involved in any  
23 communications with either the Attorney General or the  
24 Secretary of State's office that -- where the topic of  
25 rising illegal immigrant population was the topic of

1 discussion?

2 A. No, sir.

3 Q. During the consideration of the referrals or  
4 investigations, were you ever asked to give special  
5 attention or focus on illegal aliens or non-citizens  
6 voting?

7 A. No, sir. I was never asked to give any special  
8 consideration to that. At some point in time, I had  
9 been asked, "Hey, are there any cases on your spread  
10 sheet?" And in those circumstances I identified the  
11 ones on the spread sheet, as I have done today.

12 Q. Who made this request?

13 A. I don't remember.

14 Q. Well, let's see if we can flesh this out. When  
15 were you asked to identify these types of cases on your  
16 spread sheet?

17 A. I don't remember.

18 Q. Was it during the 2011 legislative session?

19 A. I couldn't say for certain.

20 Q. Was it by a legislator?

21 A. Oh, no, sir.

22 Q. Was it by someone in the Secretary of State's  
23 office?

24 A. I don't believe so, no.

25 Q. Do you recall which office the request came from?

1 A. I would believe it came from -- internally within  
2 the law enforcement division.

3 Q. Internally from which division?

4 A. Well, the special -- I would say that it came  
5 from either my division chief or my, at the time, who  
6 would have been Major Boatright or the Deputy Attorney  
7 General for criminal justice Eric Nichols.

8 Q. Do you know what the reason for that request was?

9 A. No, sir.

10 Q. And did you respond to that request?

11 A. I would presume so, yes.

12 (Exhibit No. 593 was marked.)

13 BY MR. GEAR:

14 Q. I'm showing you what's been marked as Exhibit 593  
15 and give you a chance to look at that. Have you had a  
16 chance to review the document?

17 A. I'm almost done. Sorry.

18 Q. Take your time.

19 A. Okay, sir.

20 Q. Can you tell me what this is?

21 A. This document appears to be a clipping of the  
22 Dallas Morning News, dated May 18, 2008. And it is  
23 titled AG Fails to Uncover Major Voting Fraud.

24 Q. Have you seen this newspaper article before?

25 A. Not to my memory.

1 Q. Focusing on the article itself, by May 18, 2008  
2 it indicates that, "Mr. Abbott has prosecuted 26 cases."  
3 Would that be accurate based on your spread sheet?

4 A. I think about that time that would be pretty  
5 close.

6 Q. Okay. Is it also accurate to say that in 18 of  
7 the 26 cases the voters were eligible voters with -- the  
8 votes were properly cast and no vote was changed, 18 of  
9 the 26?

10 A. I do know that no vote was changed, but I don't  
11 know that it was properly cast.

12 Q. It also goes on to say, "but people who collected  
13 the ballots for mail-in were prosecuted." Would that be  
14 fair to say?

15 A. Yes, sir. If I could clarify.

16 Q. Please.

17 A. If someone assists in the completion of a mail-in  
18 ballot, someone assists the voter, fails to sign as  
19 assisting the voter and -- or possesses the ballot, they  
20 would be prosecuted for the position of the ballot or  
21 carrier of envelope of another. Many of these cases  
22 also involve unlawful assistance. And if a voter was  
23 unlawfully assisted in the completion of a mail-in  
24 ballot or any other type of ballot, under State law that  
25 ballot would be stricken.



1 Q. Okay. And it says, in 593, that "the State law  
2 makes it a crime to carrier someone else's filled out  
3 ballot to the ballot box." Is that fair?

4 A. It is a crime unless they identify themselves on  
5 the carrier envelope.

6 Q. Unless the carrier puts his or her own name on  
7 the -- and address on the envelope?

8 A. Yes, sir. I believe there are also defenses to  
9 prosecution to that.

10 Q. In the middle column of Exhibit 593, I think it's  
11 the third paragraph in the bottom, "when an attorney  
12 general makes certain cases a priority, you can dispatch  
13 investigators, assign tears of State lawyers and direct  
14 millions of dollars from federal grants and the agency  
15 budget, such assistance helps bolster action in counties  
16 especially where local prosecutor's lack the resources."  
17 Is that a fair statement? And let me -- why don't you  
18 strike that. Is it accurate that when an attorney  
19 general, in this case Attorney General Abbott, makes  
20 voter fraud a priority, he can do the types of things  
21 described here?

22 MR. SWEETEN: Assumes facts not in evidence.  
23 Calls for speculation. Objection.

24 BY MR. GEAR:

25 Q. Well, let me see if I can come at that a little

1       bit differently then. Is it accurate to say that  
2       Attorney Abbott dispatched investigators throughout the  
3       state to root out and prosecute voter fraud cases?

4       A. No, I wouldn't say that's an accurate statement.

5       Q. What would you say is an accurate statement?

6       A. I would say that our office receives referrals  
7       from third parties, such as the Secretary of State or  
8       the DA's offices or local law enforcement, asking us to  
9       help them in the investigation of election code  
10      violations. And that we have a group of investigators  
11      who perform their duty in that regard.

12      Q. Does he have an authority to assign teams of  
13      State lawyers?

14               MR. SWEETEN: Objection; calls for  
15      speculation. You can answer.

16      A. I don't think the Attorney General would direct  
17      the assignment of prosecutor's to cases. I think that  
18      we have a number of prosecutor's within our office who  
19      handle a wide variety of cases, some which include  
20      election cases.

21      Q. (By Mr. Gear) Is it accurate in this article  
22      that there was a \$1.4 million federal crime fighting  
23      grant?

24      A. As I think I previously discussed in my  
25      testimony, I think the criminal investigations division,

1 just the criminal investigations division, got a \$1.4  
2 million grant. And of that grant, a portion of  
3 investigators were hired and the special investigations  
4 unit, the money laundering unit, the cyber crimes unit  
5 and the fugitive apprehension unit.

6 Q. Previously you testified to a case regarding  
7 Hidalgo County. If you look at paragraph 3, second  
8 paragraph I believe, from the top, it says, "in another  
9 case, three Hidalgo County women were indicted on  
10 charges. They illegal assisted elderly voters and  
11 mishandled the mail-in ballots in 2005, McAllen mayor's  
12 race." Was that the Hidalgo case that you were  
13 referencing that was handled by a different agency?

14 A. No. This is actually a different case.

15 Q. It is a different case?

16 A. Yes, sir. And I think in that case there were --

17 MR. SWEETEN: Just answer his question.

18 A. I'm sorry.

19 Q. (By Mr. Gear) And the answer was this is a  
20 different case?

21 A. This is a different case.

22 Q. And in this case in 2005, the judge dismissed the  
23 allegations. Is that accurate?

24 A. Yes, sir, I believe so.

25 Q. And is this particular case referenced in your

1 spread sheet?

2 A. Yes, sir. It's referenced in the referrals.

3 Q. I think I'm almost done. Let me kind of go  
4 through my notes here?

5 A. Yes, sir.

6 Q. Are you aware of any testimony during the 2011  
7 legislative session where SB 14 was discussed where your  
8 spread sheet was the topic of discussion?

9 A. I believe I was present when Deputy Director  
10 David Maxwell testified, but I don't recall which  
11 session -- which House.

12 Q. And he testified in 2011?

13 A. Yes, sir, I believe so.

14 (Exhibit No. 594 was marked.)

15 BY MR. GEAR:

16 Q. I'm going to show you what's been marked as  
17 Exhibit 594 and give you a chance to look at that. You  
18 indicated that David Maxwell provided testimony. And  
19 the question is, is that what you were referring to?

20 A. Yes, sir, I believe so.

21 Q. Do you see any reference to a spread sheet in his  
22 testimony, more specifically, to your spread sheet?

23 A. I don't see anything that says my spread sheet.

24 Q. Okay. Does anything he testified to in 2011  
25 change any of the answers that you gave here today?

1 A. No, sir, I don't believe so.

2 MR. SWEETEN: I'm going to object to the  
3 question as compound. But he's answered it.

4 (Exhibit No. 595 was marked.)

5 BY MR. GEAR:

6 Q. Did you still want to take some time to review  
7 that?

8 A. I don't believe Mr. Maxwell's testimony will  
9 change my testimony.

10 Q. Okay. Take some time to review that exhibit and  
11 then we can talk about it.

12 A. This one right here, sir?

13 Q. Yes. And specifically, just so we can move this  
14 forward a little bit, I think it's Page 7, do you see  
15 your name indicated?

16 A. Yes, sir, I do.

17 Q. Have you seen this document before?

18 A. No, sir.

19 Q. And for the record, this is the plaintiffs  
20 supplemental initial disclosures pursuant to federal  
21 rules of civil procedure 26 A. Were you involved in any  
22 aspect of preparing this particular document?

23 A. No, sir.

24 Q. All right. And I ask you, did you see your name  
25 indicated in it under, I believe No. 12, it indicates

1 Captain Forrest Mitchell. That's actually Major  
2 Mitchell at this point, correct?

3 A. Yes, sir.

4 Q. All right. And it says, "Captain Mitchell is a  
5 member of the special investigations unit of the law  
6 enforcement division of the office of the Texas Attorney  
7 General," which is accurate, correct?

8 A. Yes, sir.

9 Q. "Captain Mitchell or Major Mitchell, has  
10 knowledge regarding election fraud in the State of  
11 Texas." Other than the testimony that you provided  
12 today, is there any additional knowledge that may be  
13 relevant to voter fraud in the State of Texas?

14 MR. SWEETEN: Counsel, I'm going to the  
15 object to the question as vague. We've provided a  
16 description of his areas of testimony. Obviously you've  
17 had the opportunity to, now for six hours, to question  
18 him on that. We intend to ask him questions, and in  
19 relation to the substance of the matters here. So I  
20 think the question is -- I think it's unfair.

21 MR. GEAR: I withdraw the question.

22 BY MR. GEAR:

23 Q. Other than what you've testified to here today,  
24 are you aware of any other cases of voter impersonation  
25 in the State of Texas?

1 A. No. I'm only aware of the ones that were  
2 referred to our office.

3 Q. Other than what you testified to here today, are  
4 you aware of any other cases where the allegation was  
5 illegal aliens or illegal non-citizens voting?

6 A. No, sir.

7 Q. Other than what you testified to here today, are  
8 you aware of any other investigations regarding voter  
9 impersonation?

10 A. Could you repeat that one more time?

11 Q. Other than what you testified to here today, are  
12 you aware of any other investigations involving voter  
13 impersonation in the State of Texas?

14 A. I am aware of one.

15 Q. And what would that be?

16 A. I read an article about a case that's ongoing now  
17 in Tarrant County where the -- a son used his father's  
18 voter registration card to cast a ballot in an election.  
19 But I just read that in the open source newspaper.

20 Q. So you gained that knowledge from the newspaper?

21 A. Uh-hun.

22 Q. Has any allegation been referred to the OAG's  
23 office?

24 A. No, sir. That's being conducted by the Tarrant  
25 County district attorney's office.

1 Q. Has there been any communication with the Tarrant  
2 County district attorney's office regarding that  
3 allegation?

4 A. No, I haven't talked to them at all.

5 Q. Do you know the name of the alleged?

6 A. No, sir, I'm sorry.

7 Q. Perpetrator, for lack of a better word?

8 A. No, sir, I'm sorry.

9 Q. Do you know the election that it allegedly  
10 occurred?

11 A. I want to say it was this primary election.

12 Q. 2012?

13 A. Uh-huh.

14 Q. And that occurred on?

15 A. I think it would be May 29th.

16 Q. May 29 primary election. And other than what you  
17 read from the newspaper, are you aware of any other  
18 facts pertaining to that?

19 A. No, sir.

20 Q. Can you investigate alleged voter fraud without a  
21 referral?

22 A. The Texas election code does say that if we had  
23 reason to believe that a violation occurred, that the  
24 attorney general's office could investigate.

25 Q. Have you ever investigated a voter fraud case



1 without an official referral?

2 A. No, sir. We generally -- we request a referral  
3 before we initiate an investigation.

4 Q. Have you requested a referral for the case which  
5 you just referenced?

6 A. No, sir.

7 Q. Other than what you testified today, are you  
8 aware of any prosecutions for voter impersonation in the  
9 State of Texas?

10 A. I believe the DA has indicted that case in  
11 Tarrant County, the one I said regarded voter  
12 impersonation.

13 Q. Is the OAG's office involved in that case in any  
14 aspect?

15 A. No, sir.

16 Q. I believe you testified that you have not  
17 requested a referral?

18 A. No, sir.

19 Q. Why not request a referral for that particular  
20 case?

21 A. Because we have plenty of work to do on our own.

22 Q. Fair answer. I think I am done.

23 MR. GEAR: And I will pass the questioning  
24 to Ezra.

25 MR. ROSENBERG: Thanks.

## EXAMINATION

BY MR. ROSENBERG:

Q. And I will be very short, Major. Thanks for your time today.

A. Yes, sir.

Q. Just a couple of questions. You testified that statutorily required for the district attorneys to notice the Secretary of State when they are charging someone with election fraud. Is that what the requirement is?

A. I believe the statutory language says if they are going to initiate an investigation of prosecution.

Q. And I think you also testified then, that the Secretary of State maintains a list of those instances when it has been notified?

A. I don't remember that.

Q. Have you ever seen a list that's maintained by the Secretary of State of investigations that were initiated by the district attorney?

A. No, I've never seen such a list.

Q. Do you know if any such list has been produced in this litigation?

A. No, sir, I do not.

Q. Other than the spread sheet that you maintained, have you ever created any reports related to voter

1 fraud?

2 A. As I previously testified, sir, preceding the --  
3 preceding the creation of the spread sheet, I was  
4 required to produce a WordPerfect document that talked  
5 about the types of cases that we would referred and the  
6 referral sources and the allegations contained.

7 Q. And has that document been produced in this  
8 litigation?

9 A. I provided it to counsel.

10 Q. Other than that WordPerfect document, have you  
11 ever created any other report related to voter fraud?

12 A. No, sir.

13 Q. Have you ever done any specific analysis of in  
14 person voter fraud, other than the spread sheet and the  
15 WordPerfect document?

16 A. One time in, I want to say 2006, I looked at the  
17 incidents of mail-in -- not mail-in ballot fraud, but  
18 the proportion of mail-in ballots received by a county.

19 Q. And what was your purpose in doing that?

20 A. I wanted to see what the typical average is in  
21 the State of Texas for an elections office to receive --  
22 for the number of registered voters to the number of  
23 mail-in ballots cast.

24 Q. Did you draw any conclusions in that report?

25 A. If memory serves me correctly, I think it was,

1 the average county might receive two to three percent of  
2 their registered voters for mail-in applications.

3 Q. Did you break down that percentage by any  
4 demographics?

5 A. No.

6 Q. Other than that report and the spread sheet and  
7 the WordPerfect document, have you done any specific  
8 analysis of in person voter fraud?

9 A. No, sir.

10 Q. Have you ever been asked to do any specific  
11 analysis of in person voter fraud?

12 A. No, sir.

13 Q. To your knowledge, has anyone in your office ever  
14 been asked to do any specific analysis of in person  
15 voter fraud?

16 A. No, sir.

17 Q. To your knowledge, has anyone in your office ever  
18 been asked to do an analysis of how various forms of  
19 voter identification would affect the level of voter  
20 fraud?

21 A. No, sir.

22 Q. I would like to talk, very briefly about the four  
23 instances of voters who tried to impersonate -- who are  
24 alleged to have tried to impersonate others. And by  
25 that -- I said four. You can correct me if I'm wrong.

1 As I understand it, it is only four instances of persons  
2 trying to impersonate others. The fifth person was  
3 charged with trying to help one of these four people  
4 impersonate someone else. Is that correct?

5 A. That's correct.

6 Q. So it is four instances where a person tried to  
7 impersonate someone else. One of those instances was  
8 McMillian. And as I understand that, that was an  
9 election official; is that correct, McMillian?

10 A. Yes, sir. Delores McMillian was an elections  
11 worker in Dallas County.

12 Q. And somehow, prior to the polls opening, she had  
13 somehow signed herself up as someone else?

14 A. Yes, sir, that's my understanding.

15 Q. So that wasn't a situation where  
16 Delores McMillian walked into the polling place and  
17 pretended, to the election official, that she was  
18 someone else; is that correct? She was basically  
19 cooking the books because she was the election official  
20 herself, right?

21 A. My understanding is that she marked that voter on  
22 the ballot before the polls were even opened.

23 Q. Without having to interact with any other  
24 election official, right?

25 A. I believe that she was interacting with her

1 mother who was doing the same thing.

2 Q. So it's not a situation where she presented an  
3 identification to someone and said I'm someone else.  
4 She just manufactured this along with her mother because  
5 she was the election official, correct?

6 A. That's my understanding, yes, sir.

7 Q. Now, you also talk about a Mary Comparin. And  
8 did you say that that was a situation where  
9 Ms. Comparin, and I know this is -- I've only,  
10 Mr. Sweeten, because it's a company situation. But  
11 she's alleged to have gotten, I think you used the term  
12 "various images of driver's licenses, et cetera?"

13 A. It's my understanding that Mary Comparin had  
14 obtained three or four Texas driver's licenses in  
15 different names.

16 Q. With her photo on them?

17 A. Yes, sir.

18 Q. So if she were to produce those driver's licenses  
19 at the polling place, the photo would match her face,  
20 correct?

21 A. Yes, sir.

22 Q. So SB 14 would not really help that situation; is  
23 that correct?

24 MR. SWEETEN: Objection; calls for legal  
25 conclusions, speculation. But you can answer.

1           A. It depends on whether she used her voter  
2 registration certificate to come to the polling place to  
3 cast her ballot, or whether she used her Texas driver's  
4 license. That suspect had obtained four different voter  
5 registrations that were mailed to her residence.

6           Q. (By Mr. Rosenberg) Right. But for terms of the  
7 photo ID that she had, there was three different photos  
8 of her, but under three different names; is that  
9 correct?

10          A. Yes. She had three different IDs in different  
11 names.

12          Q. Are you aware of anyone more knowledgeable than  
13 yourself in the SUI or the OAG who has knowledge of  
14 voter fraud?

15          A. No, sir.

16          Q. I didn't think so.

17                 MR. ROSENBERG: And I think I don't have any  
18 further questions.

19                 MR. SWEETEN: I'm probably going to have a  
20 short redirect. So I'm going to speak with counsel  
21 about it so let's take about a 5-minute break.

22                 (Brief recess.)

23                 EXAMINATION

24                 BY MR. SWEETEN:

25                 Q. Major Mitchell, you have been asked a number of

1 questions today about voter fraud. And I want to ask  
2 you a few questions based upon your experience as an  
3 investigator. What types of cases do you work on in  
4 addition to voter fraud?

5 MR. GEAR: I just object; asked and  
6 answered. But go ahead.

7 A. Currently, I don't do any investigations myself.  
8 I'm just a supervisor investigator at this point in  
9 time. But historically, I have worked capital murder  
10 investigations, public integrity investigations, money  
11 laundering investigations, fraud investigations.  
12 Citizen investigation, administrative investigations.  
13 And a wide variety of criminal offense.

14 Q. (By Mr. Sweeten) How long have you worked  
15 specifically on the issue of investigating voter fraud  
16 as part of the many things you do?

17 A. I would say since 2005.

18 Q. Now, with respect to the issue of in person voter  
19 fraud, can you tell us how difficult is in person voter  
20 fraud to detect as a general matter?

21 A. It is incredibly difficult to detect.

22 Q. Why is that?

23 A. Because the only way that -- it's my experience  
24 that the only way that you would detect in person voter  
25 fraud is if someone inside the polling place personally



1 knows the person who's presenting the fraudulent voter  
2 registration certificate. And additionally, there is an  
3 absence of a positive identification in that regard, in  
4 that it's difficult, many times when we get these cases  
5 referred to us, that they are coming months after the  
6 fact. And many cases, it could be there's already  
7 another election that has taken place.

8 And when I interview witnesses or any one of my  
9 investigators interview witnesses it's very difficult  
10 for voters to identify a potential suspect, if there was  
11 one, through conventional photo line-ups or that regard.  
12 So it is very hard to detect unless someone in the  
13 actual polling place knows that person personally.

14 Q. Okay. How difficult is in person voting fraud to  
15 detect as compared to other types of crimes, such as  
16 white-color crime that you investigate?

17 MR. ROSENBERG: I'm going to object to form.

18 MR. GEAR: I would object; calls for  
19 speculation.

20 BY MR. SWEETEN:

21 Q. Just based upon your experience as an officer,  
22 can you compare as far as detecting in person voter  
23 fraud, how it compares to other types of crimes that you  
24 investigate?

25 MR. SWEETEN: I will also object to

1 relevance.

2 MR. ROSENBERG: And compound. Go ahead.

3 A. I believe that in person voter fraud is very  
4 difficult to detect in comparison to other cases because  
5 in other cases I have, in many cases, forensic evidence  
6 that I can rely upon to detect a potential suspect that  
7 do not exist in in person voter fraud.

8 Q. (By Mr. Sweeten) Okay. Now, when we talked --  
9 we talked about, I think to a large degree, about the  
10 sources of referrals that the office of attorney general  
11 received. You talked about referrals from the Secretary  
12 of State from local election officials and from local  
13 law enforcements. Let me ask you, when the district  
14 attorney's office is prosecuting an election fraud case,  
15 do you -- are you aware of that? Are you made aware of  
16 that?

17 A. Not necessarily.

18 Q. Okay. And in the three most popular counties in  
19 the State of Texas would Harris County. When the Harris  
20 County DA prosecutes a voter fraud case, is that  
21 something you're made aware of?

22 A. No, sir.

23 Q. Do you have any access to statistics about how  
24 often voter fraud is prosecuted by that agency?

25 A. No, sir.

1 Q. What about the Harris County attorney, same set  
2 of questions. Are you given the -- do you have access  
3 to data regarding how much in person voter fraud they  
4 prosecute in a given year?

5 A. No, sir.

6 Q. Are you necessarily made aware of any in person  
7 voter fraud case that's occurring by the Harris County  
8 attorney?

9 A. No, sir.

10 Q. What about Bexar County? What about the Bexar  
11 County district attorney. Are you made aware  
12 specifically of instances of in person voter fraud or  
13 prosecutions?

14 MR. GEAR: Are you saying bare or bared.

15 MR. SWEETEN: Its' B-E-X-A-R, Bexar. It's  
16 San Antonio.

17 A. No, sir.

18 Q. (By Mr. Sweeten) Okay. With -- if the -- if a  
19 county attorney prosecutes a case of voter fraud, are  
20 you made aware of that?

21 A. No, sir.

22 Q. How about Dallas County, same question, are you  
23 made aware when the Dallas County district attorney is  
24 prosecuting a case of in person voter fraud?

25 A. No, sir.

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1 Q. Do you have access to statistics related to that?

2 A. No, sir.

3 Q. What about if a county attorney is prosecuting a  
4 case, do you have access to that information?

5 A. No, sir.

6 Q. Data regarding that?

7 A. No, sir.

8 Q. What about as to any other county in the State of  
9 Texas, do you get automatically -- are you given data  
10 regarding those prosecutions?

11 A. No, sir.

12 Q. Now, we've talked about other prosecutorial  
13 entities within the State of Texas that prosecute. Are  
14 there other law enforcement agencies that prosecute in  
15 person voter fraud?

16 A. I believe there could be more.

17 Q. Okay. Does the federal -- does federal law  
18 enforcement refer or do they investigate allegations of  
19 voter fraud?

20 A. I believe the FBI and the Department of Justice  
21 could investigate allegations of in person voter fraud  
22 if it was a national election.

23 Q. From 2002 through 2011, did any federal law  
24 enforcement agency refer any cases to your office?

25 A. Would you repeat that one more time?

1 Q. From 2002 through 2011, did any federal law  
2 enforcement agency refer any voter fraud cases to your  
3 office?

4 A. No, sir, not voter fraud.

5 Q. Does your spread sheet include any cases  
6 investigated by federal law enforcement officials?

7 A. No, sir.

8 Q. Does your spread sheet include any entries  
9 related to district attorneys or county attorneys that  
10 have prosecuted voter fraud?

11 A. Only the ones that we cooperated with or assisted  
12 them on the investigation.

13 Q. Okay. If you wanted to find out what federal law  
14 enforcement agencies have prosecuted voter fraud in this  
15 State, who would you ask?

16 A. I would think I would have to ask the four  
17 different US districts department of justice.

18 Q. Does -- let me ask you the question. Does the  
19 fact that the office of the attorney general, and you  
20 testified earlier that the office of the attorney  
21 general received approximately 320 referrals from 2002  
22 to the present for alleged election code violations. Do  
23 you recall that testimony?

24 A. Yes, sir, I do.

25 Q. Does the fact that your list contains 320

1 entries, does that mean since 2002 there have been 320  
2 voter fraud cases in Texas?

3 MR. ROSENBERG: Objection; leading.

4 BY MR. SWEETEN:

5 Q. Does it mean that?

6 MR. GEAR: Same objection.

7 MR. ROSENBERG: Same objections.

8 BY MR. SWEETEN:

9 Q. You can answer.

10 A. I do not believe that the 320 referrals listed on  
11 my spread sheets are representative of the actual  
12 misconduct that's occurring in the State of Texas. I  
13 believe that there's many that go undetected.

14 Q. And so is it your belief that in addition to the  
15 320 referrals, what is your belief as to whether there  
16 are additional cases of voter fraud that go undetected?

17 A. I believe that there are cases of voter fraud  
18 that go undetected and unreported.

19 Q. Okay. Let me ask you, does the fact that the  
20 office of attorney general receive more referrals  
21 related to mail-in voting fraud, meaning that it is any  
22 less serious of -- actually that it's less serious a  
23 crime than mail-in ballot fraud?

24 MR. ROSENBERG: Objection; leading.

25 MR. GEAR: Objection; leading.

1 A. I'm sorry. Could you restate the question?

2 Q. (By Mr. Sweeten) Yeah. Does the fact that the  
3 office of the attorney general received 3 -- I think you  
4 testified, received more mail-in ballot fraud  
5 allegations and referrals than in person mail-in  
6 referrals, does that make it a less serious crime under  
7 the Texas statutes of the penal code?

8 MR. ROSENBERG: Same objection; leading.

9 MR. GEAR: Also same objection.

10 A. No, sir.

11 Q. (By Mr. Sweeten) In your experience as a law  
12 enforcement officer, does increasing the severity of  
13 criminal penalties act as a deterrent to those intends  
14 to commit a criminal act?

15 A. Yes, sir I believe so.

16 Q. Does Senate Bill 14 increase criminal penalties  
17 for attempts?

18 A. Yes, sir I believe it does.

19 Q. And what about for actual voter fraud?

20 A. I think it increases the penalty.

21 Q. Between mail-in voter fraud and in person voting  
22 fraud, which of those two crimes is, as an investigator  
23 more difficult to investigate?

24 MR. GEAR: Objection; vague. Objection;  
25 calls for speculation.

1 BY MR. SWEETEN:

2 Q. You can answer.

3 A. It has been my experience that the most difficult  
4 case to investigate would be in person voter fraud.

5 Q. I'm going to read a statement to you and I'm  
6 going to ask you if you agree with this. "The well  
7 publicized fact that voter registration lists  
8 fraudulent, deceased or otherwise invalid names  
9 undermines the public confidence in the electoral  
10 process that is the life blood of Democratic  
11 institutions." As your experience as an investigator,  
12 would you agree with this statement?

13 MR. ROSENBERG: Objection; leading.

14 MR. GEAR: Same objection.

15 BY MR. SWEETEN:

16 Q. Would you agree with this statement?

17 A. I absolutely believe so.

18 Q. "Particularly given that in person voter fraud is  
19 difficult to detect without rigorous ID requirements and  
20 that as a practical matter, it is important for the  
21 State to deter and not just detect and punish voter  
22 fraud." Do you agree that, the first part of that, that  
23 in person voter fraud is difficult to detect without  
24 rigorous ID requirements?

25 MR. ROSENBERG: Objection; extraordinarily



1 leading.

2 MR. GEAR: Objection; leading.

3 A. I believe that in person voter fraud is difficult  
4 to detect absent a photo ID requirement.

5 Q. (By Mr. Sweeten) Is that statement consistent or  
6 inconsistent with your experience?

7 MR. ROSENBERG: Same objection.

8 MR. GEAR: Same objection.

9 A. I believe that that statement is consistent with  
10 my experience.

11 MR. ROSENBERG: Why don't we take a couple  
12 of minutes and we'll probably have a little redirect or  
13 recross.

14 MR. GEAR: We will have a redirect.

15 (Brief recess.)

16 FURTHER EXAMINATION

17 BY MR. GEAR:

18 Q. You were asked a question by your counsel  
19 regarding whether or not SB 14, the penalties in SB 14,  
20 would act as a deterrent to voter fraud. Do you recall  
21 those questions?

22 A. Yes, sir, I do.

23 Q. Do you believe that the current laws as they are  
24 in the State of Texas act as a deterrent to voter fraud?

25 A. I believe they act as somewhat of a deterrent.

1 Q. Do you believe that the current laws are  
2 sufficient to act as a deterrent to voter fraud?

3 A. It is my opinion that I believe that they're  
4 insufficient in the penalty to deter voter fraud.

5 Q. And what are the current penalties as they are  
6 for voter fraud in the State of Texas?

7 A. Currently an attempt is -- an attempt to commit  
8 voter fraud or voter impersonation as characterized  
9 would be a class A misdemeanor, which is punishable by  
10 only up to a year in jail and a fine of \$4,000.

11 Q. And an actual act of voting -- voter  
12 impersonation?

13 A. I believe it's only, and I believe right now it's  
14 only a third degree penalty. Only two to three years in  
15 the State of Texas and up to a \$10,000 fine.

16 Q. You're saying only two to 10 years. Would you  
17 consider that a significant amount of time for the act  
18 of voter impersonation?

19 A. And this is my opinion. We have a statute in the  
20 State of Texas which says that if you tamper with an  
21 electronic voting device, in other words an electronic  
22 E-machine, that is a first degree felony which is punish  
23 able by up to five to 99. I think tampering with an  
24 electronic voting machine or illegal voting, in my mind  
25 are not dissimilar. So I think it should be more

1 severe.

2 Q. So are you suggesting that a voter who commits  
3 voter impersonation at the polls should be subject to up  
4 to 99 years in prison?

5 A. I think that's a very serious offense and that  
6 elections in Texas are decided, in some cases, in small  
7 rural jurisdictions by a handful of votes and just one  
8 vote can swing an election.

9 Q. Under the current law, non-citizens if they  
10 voted, there's an enhancer penalty, correct?

11 A. I can't remember all the laws. I don't recall  
12 that specific one right now.

13 Q. Are the penalties specific to non-citizens  
14 voting?

15 A. I would think it would be just under 64012, which  
16 would be illegal voting.

17 Q. If a non-citizen represents that they're a  
18 citizen when they register to vote, is there an  
19 additional penalty to that?

20 A. Yes, sir. There is an offense for providing  
21 false information on the voter registration application.

22 Q. That would be perjury, correct?

23 A. Under the Texas election code it could be  
24 prosecuted either way. As perjury or the false  
25 statement on the voter registration application.

1 Q. And that would be an additional penalty to the  
2 other penalties you've discussed?

3 A. Yes, sir.

4 Q. And a voter, a non-citizen, who votes at a  
5 polling place would also be subject to deportation if  
6 they were discovered?

7 A. It's my understanding that the only way someone  
8 would be deported at this time is if they were convicted  
9 of a felony criminal offense.

10 Q. And what are you basing that on?

11 A. Articles I've read in the newspaper.

12 Q. So as the supervisor for the SIU, are you aware  
13 of what the penalties are for an illegal alien or  
14 non-citizen voting? And that would be an illegal  
15 non-citizen voting.

16 A. Federally or State?

17 Q. State.

18 A. I would think it would be -- I don't know exactly  
19 what the penalties are. I believe illegal voting is a  
20 third degree felony.

21 Q. And you mentioned federal. There are additional  
22 federal penalties for illegal aliens voting. Would that  
23 be correct?

24 A. I don't know, sir.

25 Q. You were asked a question about whether or not

1       you knew if there were additional allegations or  
2       investigations of voter fraud in Harris County, Dallas  
3       County, Bexar County. Do you recall that testimony?

4       A. Yes, sir, I do.

5       Q. In fact, you received, you being the office of  
6       the attorney general, has received referrals from all of  
7       those counties, Harris County, Dallas and Bexar County;  
8       isn't that correct?

9       A. I do not think we have received any referrals  
10      from the district attorney's office in Dallas County.  
11      We have received allegations -- we have received  
12      referrals from the Secretary of State referencing Dallas  
13      elections.

14      Q. And the initiative that you engaged in to train  
15      various, I believe you said peace officers, that  
16      included Harris, Dallas and Bexar County?

17      A. I don't recall the exact specific locations that  
18      we trained. I do know that we enlisted the support of  
19      the councils of government in geographical areas. I  
20      don't remember if Dallas or Houston were specific  
21      locations that we trained. I do know that we trained  
22      all over Texas.

23      Q. Specifically cities that had 100,000 or more?

24      A. No, we trained in locations that were actually  
25      even smaller than that. The training that I personally

1 conducted was in deep East Texas, Smith County and Bowie  
2 County.

3 Q. Now, you've relied on your spread sheet for  
4 various aspects of voter fraud in the State of Texas;  
5 isn't that correct?

6 A. Yes, sir, I have.

7 Q. In fact, you relied on that to determine the  
8 geographical areas of the violations were occurring in.  
9 I believe that was your testimony?

10 A. Yes, sir.

11 Q. And so as you sit here today, you're aware of 320  
12 referrals that came to the office of the Attorney  
13 General, correct?

14 A. Yes, sir.

15 Q. And I believe I asked you during the initial part  
16 of your testimony whether or not you were aware of any  
17 other allegations of voter impersonation or  
18 investigations of voter impersonation in the State of  
19 Texas and I believe your answer was no; is that correct?

20 MR. SWEETEN: I think that misstates the  
21 testimony.

22 BY MR. GEAR:

23 Q. Well, are you aware of any other investigations  
24 of voter impersonation in the State of Texas, other than  
25 the ones that have been investigated by the attorney

1 general's office?

2 A. I believe I mentioned the fact that I was aware  
3 of one that occurred in Tarrant County as well.

4 Q. Other than Tarrant County?

5 A. No, sir.

6 Q. So your opinion that there are many and they are  
7 undirected is just that, an opinion; is that correct?

8 A. Yes, sir it is an opinion based upon  
9 investigation that we've conducted and witnesses we've  
10 interviewed and allegations that we've reviewed.

11 Q. And based on investigations that you've  
12 conducted, you would have pursued those if the facts and  
13 the law warranted a charge of voter impersonation. Is  
14 that fair to say?

15 MR. SWEETEN: Objection; compound.

16 A. There are many reasons why we may not pursue  
17 allegations or prosecute somebody for voter  
18 impersonation. We have the proof of -- we have the  
19 burden of proof of beyond the reasonable doubt.

20 Q. (By Mr. Gear) Correct, because it's a criminal  
21 offense.

22 A. And there are cases where we may not have felt  
23 that we had proof beyond the reasonable doubt to  
24 prosecute somebody.

25 Q. Are there cases that you believed you had proof

1       beyond a reasonable doubt that you determined not to  
2       prosecute?

3           A.   No.  I don't believe that we had proof beyond a  
4       reasonable doubt that we chose not to prosecute.

5           Q.   And as you sit here today, are you aware of  
6       any -- are you aware of any cases that have not been  
7       prosecuted for voter impersonation that should have  
8       been?

9           A.   No, sir.

10          Q.   You were asked a question about the federal law  
11       enforcement having the ability to prosecute voter  
12       impersonation and investigating and prosecute voter  
13       impersonation in the State of Texas.  Do you recall that  
14       question?

15          A.   Yes, sir.

16          Q.   Are you aware of any investigations conducted by  
17       federal law enforcement between 2002 and 2012 that  
18       involved voter impersonation?

19          A.   Yes, sir, I'm aware that in the Dallas 2010  
20       investigation that the FBI was also involved.

21          Q.   And you've testified to that particular case in  
22       2010, correct?

23          A.   Yes, sir.

24          Q.   In any event, would you agree that if there was  
25       federal investigation in the State of Texas that they



1 would communicate with the State of Texas Attorney  
2 General before conducting an investigation in your  
3 jurisdiction?

4 MR. SWEETEN: Objection; it calls for  
5 speculation.

6 BY MR. GEAR:

7 Q. Well, I mean, based on your experience as a  
8 supervisor, a police officer, the supervisor of the SIU,  
9 are you aware of any cases where the federal government  
10 has investigated without first informing you of the  
11 investigation?

12 A. No, I'm not aware of any. I would hope that the  
13 FBI would communicate with us. But I know that that's  
14 not always the case.

15 Q. Regarding your opinion that there are cases that  
16 have gone undetected, which investigations, if any, are  
17 you referring to and which witnesses are you referring  
18 to that lead you to this opinion?

19 MR. SWEETEN: Objection; compound.

20 BY MR. GEAR:

21 Q. Well, let's start with investigations. Are you  
22 aware of any investigations that lead you to the opinion  
23 that there are cases that have gone undetected?

24 A. I believe that there was a case in Progresso  
25 which is Hidalgo County.

1 Q. Does that appear on your spread sheet?

2 A. Yes.

3 Q. And can you show me where it appears on your  
4 spread sheet?

5 A. I believe it appears on Page 3 of election code  
6 referrals, office of the attorney general, August 2002  
7 to present. It is approximately.

8 Q. What was the date of the alleged election?

9 A. It was the 2008 municipal election.

10 Q. What are the facts of that case?

11 A. This is a case that was referred to our office,  
12 but also the local district attorney, I believe, got the  
13 referral as well.

14 Q. Okay. And what are the facts of the case?

15 A. We had witnesses who informed us that some  
16 suspects were outside of the polling place and that they  
17 were handing out voter registration cards to vote, to go  
18 cast votes in that election.

19 Q. Those were the allegations?

20 A. Those were the allegations.

21 Q. Did your office handle the investigation?

22 A. We investigated that, yes.

23 Q. What was the outcome of that investigation?

24 A. No criminal charges were filed.

25 Q. And what was the reason no criminal charges were

1 filed?

2 A. The witness who gave us that information had  
3 inconsistent statements between interviews.

4 Q. Are there any other cases that you're basing your  
5 opinion on, the opinion that there are cases that go  
6 undetected?

7 A. Well, if I could go back to the Harris County  
8 case from the 2008 primary election, which I previously  
9 testified to.

10 Q. Can you tell me which case that is, who was  
11 involved in that?

12 A. That would be Jack Carol Crowder.

13 Q. Okay. Mr. Crowder who was ultimately convicted?

14 A. Yes, sir.

15 Q. Based on a plea?

16 A. Yes, sir. The group that did the analysis  
17 comparing Harris County voters to deceased voters had --  
18 and I don't remember the exact number, but I want to  
19 say it was hundreds, if not thousands of voters who they  
20 believed were deceased and who actually voted.

21 Q. Did you investigate that?

22 A. We could only -- we only have the resources to  
23 investigate a small portion of that allegation.

24 Q. Other than Mr. Crowder, are there any other open  
25 investigations on your spread sheet? Were there any

1 other investigations based on what the group presented  
2 on your spread sheet?

3 A. No. I mean.

4 Q. So you're saying hundreds if not thousands of  
5 possible dead people that have voted, wouldn't that be  
6 something that your office would investigate?

7 A. I only have a limited number of investigators and  
8 the ability to investigate all of the names on that list  
9 was not feasible.

10 Q. And isn't it a fact that there are people who  
11 have passed away that are still on a voter registration  
12 role and that's not -- that's because the roles have not  
13 been updated to remove them?

14 A. One of the difficulties in the State of Texas is  
15 that there are multiple jurisdictions that have voter --  
16 each county has their own voter registration department.  
17 It could be based as an election office or it could be  
18 based in a county clerk's office to handle the voter  
19 registration. So there's 254 different ways. Not all  
20 of them share the same systems. And it's my experience  
21 as an investigator, that many of the counties, the way  
22 they purge their roles of deceased voters is by looking  
23 at obituaries. And in some cases they obtain the social  
24 security death index, which could take months to do if  
25 that's what they're relying on. So there could be a

1 number of voters who are deceased.

2 Q. So ultimately, the answer to my question is yes?

3 A. Yes, sir.

4 Q. And the fact that there is a person who is  
5 deceased on the voter registration role does not mean  
6 that there is an incident of voter fraud, does not  
7 necessarily mean that there's any type of fraud going  
8 on?

9 A. Well, there's the opportunity for fraud.

10 Q. You said that you based your opinion that there  
11 are undetected cases on speaking with witnesses, can you  
12 name the witnesses who you're referring to?

13 A. No, I don't know their names today.

14 Q. And they would have been in connection with the  
15 group that you've been speaking about?

16 A. No. I was mentioning witnesses down in the  
17 Progresso case.

18 Q. And you've testified about that case, correct?

19 A. Yes, sir.

20 MR. GEAR: I don't think I have any further  
21 questions. I am going to leave the deposition open.

22 MR. SWEETEN: I have a few follow-ups.

23 MR. ROSENBERG: If you're going to go I'll  
24 go after you.

25 MR. SWEETEN: Okay. That's fine.

1 MR. ROSENBERG: You go first.

2 BY MR. ROSENBERG: It's your turn and then I  
3 get it back. Go ahead.

4 FURTHER EXAMINATION.

5 BY MR. ROSENBERG:

6 Q. Major, just because a crime may be difficult to  
7 detect doesn't mean the crime has necessarily been  
8 committed, does it.

9 A. I'm sorry. Would you repeat that one more time?

10 Q. Sure. Just because a crime may be difficult to  
11 detect doesn't mean that it's being committed, does it?

12 A. That's correct.

13 Q. Okay. And also you testified in response to  
14 questions from Mr. Sweeten about the fact that he didn't  
15 have access to the data from other counties, correct?

16 A. That's correct.

17 Q. But you have no basis upon which to quantify any  
18 additional instances of in person voter impersonation,  
19 other than those which you testified today, correct?

20 A. I have no other means to identify additional  
21 cases.

22 Q. And you would also agree, wouldn't you, that if a  
23 crime, in fact, even if it were difficult to detect  
24 became more prevalent, the more prevalent it became the  
25 more easy it would be to detect it. Isn't that a fact?

1 MR. SWEETEN: Objection; calls for  
2 speculation.

3 A. I don't believe just because it's prevalent that  
4 it's easier to detect.

5 Q. (By Mr. Rosenberg) The more prevalent it  
6 becomes, isn't this what happens in your police work,  
7 that more people know about things, more people talk  
8 about things. More people may know the person who walks  
9 into a polling place, isn't that likely to happen if it  
10 were very much more prevalent and than it is according  
11 to your statistics?

12 MR. SWEETEN: Objection; assumes facts not  
13 in evidence. Objection; calls for speculation. You can  
14 answer.

15 A. I believe that even if it's more prevalent in a  
16 jurisdiction like Harris County or Dallas County or  
17 Bexar County that it would still be very difficult to  
18 detect because the key to detecting voter impersonation  
19 fraud is that someone in the polling place must be able  
20 to identify the person whose name appears in the voter  
21 registration certificate as the system is currently  
22 designed.

23 Q. (By Mr. Rosenberg) And the more prevalent in  
24 person voter fraud was, the more likely it would be that  
25 someone would be identifying someone; isn't that

1 correct?

2 MR. SWEETEN: Same objection.

3 BY MR. ROSENBERG:

4 Q. Common sense tells you that.

5 A. I don't believe so because there is a limited  
6 number of people inside the polling place. It's limited  
7 to the number of election officials working there and  
8 limited to pole watchers who are there.

9 Q. That's correct, but the more people there are the  
10 more likely there are going to be connections. Isn't  
11 that just a matter of common sense?

12 MR. SWEETEN: Same objection. And asked and  
13 answered, by the way.

14 A. You're talking about polling places which process  
15 thousands of people a day for elections. And absent  
16 some sort of ID requirement, it would -- the likelihood  
17 that they themselves know the voters representing  
18 themselves is very slim. In fact, some elections  
19 officials I don't think even necessarily work or live in  
20 the precincts where they're assigned.

21 Q. (By Mr. Rosenberg) But the more it happens, the  
22 more likely it is people would recognize people, isn't  
23 that correct?

24 MR. SWEETEN: Asked and answered.  
25 Objection.



1 A. I don't believe that's case.

2 Q. (By Mr. Rosenberg) Let me ask another question.  
3 You have no basis on which to say whether there's one  
4 more instance of in person voter fraud or five more;  
5 isn't that correct?

6 MR. SWEETEN: Objection; argumentative.

7 A. I believe with a fact that we have thousands of  
8 people who are deceased on our pole lists, who every  
9 year voter registration cards get mailed out, I believe  
10 that's an incredible opportunity to commit fraud and  
11 that the government has a responsibility to stop that.

12 Q. (By Mr. Rosenberg) But you have no basis upon  
13 which to quantify it whatsoever?

14 MR. SWEETEN: Objection; asked and answered.  
15 Objection; argumentative.

16 A. The basis I would have to argue that would be  
17 that we know there are thousands and tens of thousands  
18 of deceased voters on our roles in the State of Texas  
19 and that opportunity exist.

20 Q. (By Mr. Rosenberg) But you cannot identify any  
21 instances of voter fraud, other than those that you've  
22 identified in your in person voter fraud, other than  
23 those you've identified in your spread sheet?

24 MR. SWEETEN: Objection; asked and answered.  
25 Go ahead. Objection; argumentative.

1           A. It's a very difficult crime to detect.

2                   BY MR. ROSENBERG: Pass to Mr. Sweeten.

3                   MR. SWEETEN: I have no further question  
4 thank you.

5                   MR. GEAR: Again, I'm going to hold this  
6 deposition open.

7                   MR. SWEETEN: Let's talk about that. What  
8 you're talking about. What is your specific complaint,  
9 Mr. Gear.

10                  MR. GEAR: Well, my specific complaint is  
11 that your client has testified on numerous occasions  
12 during this deposition that there are other documents  
13 that are available that may provide support to his  
14 testimony. Those documents, as I know, have not been  
15 produced. And there are multiple documents that we have  
16 gone through. I believe I have a right to hold this  
17 deposition open based on that. And that's what I intend  
18 to do.

19                  MR. SWEETEN: Well, let me give you a brief  
20 response on the record.

21                  MR. GEAR: Sure.

22                  MR. SWEETEN: First of all, you requested  
23 documents from us and I -- your request has been  
24 objected to, both in the request to produce which was  
25 answered on March 30th where we objected that it was

1       overly broad, unduly burdensome. And then we also have  
2       requested to the deposition notice. I'll also say that  
3       we have offered the Department of Justice and we've  
4       provided you the indictments, the convictions, we  
5       provided you a stack of documents. You have not --  
6       we've also attempted to discuss with you and your office  
7       in particular, the -- what it is specifically you're  
8       looking for because if you're request really is that you  
9       want every single case file underlying the 320  
10      investigations on this spread sheet, it is an  
11      extraordinarily difficult request based upon those  
12      documents. I have not gotten any sense from you-all  
13      that you want anything less than everything, and so  
14      we've objected we're standing by that objection. We  
15      stand ready to discuss the matter if with you. In light  
16      of -- if you want to discuss this issue, we will do  
17      that. But we've provided you -- and we've maintained  
18      our objection throughout and we still maintain that  
19      objection based upon the breadth of the request that  
20      have been made.

21               MR. GEAR: And I respect that. And part of  
22      that conversation has been with me. And part of that  
23      conversation has essentially said -- asked me to  
24      identify what I believe I need in response to the spread  
25      sheet and I've said I could not do that. I believe I

1       said that both in writing and orally. And again,  
2       there's no need to argue this much farther on the  
3       record.

4                       MR. SWEETEN: I agree.

5                       MR. GEAR: But I intend on holding this  
6       deposition open.

7                       MR. SWEETEN: Okay. We can go off the  
8       record.

9                       (Deposition concluded)

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245

CHANGES AND SIGNATURE

RE: STATE OF TEXAS VS. HOLDER

PAGE	LINE	CHANGE	REASON
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Major Forrest Mitchell

June 15, 2012

246

1 I, MAJOR FORREST MITCHELL, have read the  
2 foregoing deposition and hereby affix my signature that  
3 same is true and correct, except as noted above.

4 MAJOR FORREST MITCHELL  
5 THE STATE OF TEXAS )  
6 )  
7 COUNTY OF \_\_\_\_\_ )

8 Before me, \_\_\_\_\_, on this day  
9 personally appeared MAJOR FORREST MITCHELL, known to me  
10 (or proved to me under oath or through  
11 (description of identity card or other document) to be  
12 the person whose name is subscribed to the foregoing  
13 instrument and acknowledged to me that they executed the  
14 same for the purposes and consideration therein  
15 expressed.

16 Given under my hand and seal of office this \_\_\_\_\_  
17 day of \_\_\_\_\_, \_\_\_\_\_.

18 NOTARY PUBLIC IN AND FOR  
19 THE STATE OF  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS )

VS. )

NO. 12-CV-128

(DST, RMC, RLW)

ERIC H. HOLDER, JR., )

In his official )

Capacity as Attorney )

General of the United )

States, ET AL )

\*\*\*\*\*

CERTIFICATE FROM THE  
ORAL DEPOSITION OF  
MAJOR FORREST MITCHELL  
JUNE 15, 2012

\*\*\*\*\*

I, Janalyn Reeves, a Certified Shorthand Reporter  
in and for the State of Texas, do hereby certify that  
the foregoing deposition is a full, true and correct  
transcript;

That the foregoing deposition of MAJOR FORREST  
MITCHELL, the Witness, hereinbefore named was at the  
time named, taken by me in stenograph on June 15, 2012,  
the said Witness having been by me first duly cautioned  
and sworn to tell the truth, the whole truth, and  
nothing but the truth, and the same were thereafter  
reduced to typewriting by me or under my direction. The  
charge for the completed deposition is \$ . . . . . due  
from Defendant.

() That pursuant to the Federal Rules of Civil

1 Procedure, the Witness shall have 30 days after being  
2 notified by certified mail, return receipt requested, by  
3 the deposition officer that the original deposition  
4 transcript is available in her office for review and  
5 signature by the Witness and if any corrections made are  
6 attached hereto;

7 ( ) That by agreement of counsel, a reading condensed  
8 copy of the deposition transcript along with the  
9 full-size original changes and Signature Sheet has been  
10 sent to \_\_\_\_\_ on \_\_\_\_\_ for review and  
11 signature within 30 days and if any corrections returned  
12 are attached hereto;

13 ( ) That by agreement of counsel, the deposition  
14 officer is instructed to release the original deposition  
15 transcript to \_\_\_\_\_ on \_\_\_\_\_, for review and  
16 signature, and the deposition officer is thereafter  
17 released of any further responsibility with regard to  
18 the original.

19 ( ) That the Witness shall have thirty (30) days for  
20 review and signature of the original transcript and if  
21 any corrections returned are attached hereto.

22 ( ) That the signed transcript ( ) was ( ) was not  
23 received from the Witness within 30 days.

24 ( ) That the examination and signature of the Witness  
25 is waived by the Witness and the parties;



1 That the amount of time used by each party at the  
2 deposition is as follows:

3 Mr. Bruce Gear - 5 hours 46 minutes

4 Mr. Ezra Rosenberg - 16 minutes

5 Mr. Patrick Sweeten - 14 minutes

6 I further certify that I am neither counsel for,  
7 related to, nor employed by any of the parties in the  
8 action in which this proceeding was taken, and further  
9 that I am not financially or otherwise interested in the  
10 outcome of the action.

11 WITNESS MY HAND, this the \_\_\_\_\_ day  
12 of \_\_\_\_\_, A.D., 2012.

13 JANALYN REEVES-----  
14 Cert. No. 3631  
15 Expires Dec. 12  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, : Docket No. CA 12-128  
:  
Plaintiff :  
v. :  
:  
ERIC H. HOLDER, JR., in his : Washington, D.C.  
Official Capacity as : Monday, July 9, 2012  
Attorney General of the : P.M. SESSION  
United States, :  
:  
Defendant, and :  
:  
ERIC KENNIE, et al., :  
:  
Intervenor-Defendants : 2:00 p.m.  
..... : .....

TRANSCRIPT OF BENCH TRIAL  
DAY 1 - P.M. SESSION  
BEFORE THE HONORABLE DAVID S. TATEL  
UNITED STATES CIRCUIT JUDGE  
THE HONORABLE ROSEMARY M. COLLYER  
THE HONORABLE ROBERT L. WILKINS  
UNITED STATES DISTRICT JUDGES

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## C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JOSE ALISEDA				
By Mr. Freeman	5	--	--	--
By Mr. Sanchez	--	31	--	--
FORREST MITCHELL				
By Mr. Sweeten	33	--	69	--
By Mr. Gear	--	49	--	--
SENATOR THOMAS WILLIAMS				
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THOMAS SAGER				
By Mr. Mortara	135	--	--	--

## E X H I B I T S

NUMBERADMITTED

(NO EXHIBITS MOVED INTO EVIDENCE.)

1 purpose. Through lunch -- not counting the cross-examinations  
2 of Representative Aliseda, through lunch Texas had used 12.5 of  
3 its hours, the United States had used 41 minutes, and the  
4 intervenors had used 13 minutes.

5 Go right ahead, sir. Nice to see you again.

6 MR. SWEETEN: Good afternoon, Your Honor. Thank you.  
7 Patrick Sweeten on behalf of the State of Texas. The State of  
8 Texas calls Major Forrest Mitchell.

9 (Oath administered by Courtroom Clerk.)

10 (FORREST MITCHELL, PLAINTIFF witness, having been duly sworn,  
11 testified as follows:)

12 DIRECT EXAMINATION

13 BY MR. SWEETEN:

14 Q. Good afternoon, Major Mitchell.

15 A. Good afternoon, sir.

16 Q. Can you introduce yourself to the court, please?

17 A. Yes. My name is Forrest Andrew Mitchell and I am a major  
18 with the law enforcement division of the Attorney General's  
19 Office for the State of Texas.

20 Q. What is it you do for the Texas Attorney General's Office?

21 JUDGE COLLYER: Excuse me. Is major a title? Is major  
22 a rank or is major a name?

23 THE WITNESS: Major is a rank that I hold.

24 THE COURT: Thank you, sir. Go ahead.

25 BY MR. SWEETEN:

1 Q. What is it that you do for the Texas Attorney General's  
2 Office?

3 A. I'm a state criminal investigator with supervisory  
4 responsibility.

5 Q. And where do you currently live?

6 A. I live in Austin, Texas with my wife and children.

7 Q. How long have you worked for the Office of Attorney General  
8 in Austin?

9 A. Since -- in September it will be 15 years.

10 Q. And what did you do when you first joined the office?

11 A. When I first joined the office, I was assigned to the  
12 prosecution assistance division, and our job was to travel  
13 around the state and help smaller rural jurisdictions in the  
14 capital murder prosecutions.

15 Q. And what was your next position with the Office of Attorney  
16 General after that?

17 A. In June of 2005 I was promoted to the rank of lieutenant  
18 within the Special Investigations Unit.

19 Q. Can you tell the Court what it is that the Special  
20 Investigations Unit does?

21 A. Yes. The Special Investigations Unit is a team of -- or has  
22 teams of investigators that conduct criminal investigations in a  
23 wide variety of areas. Some of these areas include money  
24 laundering, human trafficking, public integrity, white collar  
25 crime, and election violations. I also have a team of

1 investigators who assist local DA's with criminal cases as well.

2 Q. When was this unit formed, sir?

3 A. It was formed in the summer of 2005.

4 Q. And how many law enforcement officers do you supervise total  
5 within the SIU?

6 A. There are 40 investigators in the Special Investigations  
7 Unit.

8 Q. How, do all of those work on elections investigations?

9 A. No, sir, only a portion.

10 Q. And in fact, of the 64 officers under your charge, how many  
11 work on elections violations?

12 A. We currently have three investigators assigned to work  
13 election cases in the State of Texas.

14 Q. And how do you refer to that subgroup of the SIU?

15 A. We refer to them as the elections team.

16 Q. Now, what are the types of election code violations that the  
17 election team investigates?

18 A. It would be illegal voting and other violations of the Texas  
19 election code, or Penal Code offenses surrounding elections.

20 Q. And let's focus on the illegal voting cases for a moment.  
21 Are there different types of illegal voting cases that you  
22 investigate?

23 A. Yes, sir. Under Chapter 64 of the Texas Election Code, the  
24 offense of illegal voting is kind of broken into four  
25 categories: The first category would be an ineligible voter



1 casting a ballot in an election; another would be voter  
2 impersonation; another example is a voter who votes more than  
3 once in an election; and then the final type of illegal voting  
4 is a person who marks a ballot contrary to the instructions of a  
5 voter.

6 Q. Okay. Now, one of the things you said is "voter  
7 impersonation." What is that?

8 A. Voter impersonation is when someone uses another's identity  
9 to cast a ballot in an election, either to vote again or to vote  
10 in an election they're not eligible to vote in.

11 Q. Now, I want to talk first before we go into that in more  
12 detail about the referral investigation process. How does the  
13 SIU learn of potential cases of election violations?

14 A. The Office of the Attorney General receives investigative  
15 referral requests from a wide variety of sources. The first  
16 would be the Texas Secretary of State's Office; another source  
17 would be the local district and county attorneys, and then also  
18 from elections administrators and then from local law  
19 enforcement. And then when the Attorney General's Office  
20 receives these referrals, they're routed to the Special  
21 Investigations Unit.

22 Q. So we're clear, does the Office of Attorney General ever  
23 initiate investigations on its own without a referral?

24 A. By our policy, we're referral driven.

25 Q. Are all election violation referrals to the Office of

1 Attorney General typically routed to the SIU office?

2 A. Yes, sir.

3 Q. Does the SIU or the Office of Attorney General's office have  
4 sole jurisdiction over election violation cases within the  
5 State of Texas?

6 A. No, sir. Local district and county attorneys have  
7 concurrent jurisdiction on elections, and also the federal  
8 government has jurisdiction in, I would presume, national  
9 elections.

10 Q. Now, are those county DA's or county attorneys, are they  
11 required to refer to the Office of Attorney General cases to  
12 you, or can they prosecute those on their own?

13 A. There's no legal requirement for the local county and  
14 district attorneys to refer a case to us. They have concurrent  
15 jurisdiction and they're capable of investigating and  
16 prosecuting those on their own.

17 Q. In addition to your supervisory responsibilities, have you  
18 personally been assigned to investigate election violations?

19 A. Yes, sir. I have been assigned cases and I have assisted in  
20 investigation of election code offenses.

21 Q. And do you keep track of all election violation cases that  
22 are referred to your office?

23 A. Yes, sir, I do.

24 Q. And how do you do that?

25 A. I maintain an Excel spreadsheet which is divided into three

1 books. The first book would be all of the election code  
2 referrals that come into our office; and the second book would  
3 be the prosecutions resolved; and then the third book of the  
4 spreadsheet would be the charges pending.

5 Q. So when the SIU receives a referral, what do you do with  
6 respect to the spreadsheet?

7 A. The first thing that we do is that we assign the referral a  
8 tracking number, and then we examine the allegations and record  
9 them on our spreadsheet.

10 Q. And how do you maintain those spreadsheets?

11 JUDGE COLLYER: Isn't this already addressed in the  
12 record and ruled on by the court?

13 MR. SWEETEN: Yes, Your Honor. I'm just laying  
14 foundation for the spreadsheets that I'm going to talk about.

15 JUDGE COLLYER: Yes, but we've already ruled on the  
16 spreadsheets, didn't we? Wasn't there an objection to the  
17 spreadsheets because the government didn't see the underlying  
18 documentation, and I ruled it was a business record?

19 MR. SWEETEN: Yes, i think that's right.

20 THE COURT: So why don't we just move on?

21 MR. SWEETEN: Yes, ma'am.

22 THE COURT: Great. Good thinking.

23 BY MR. SWEETEN:

24 Q. So let's talk about the spreadsheets, and in particular I'm  
25 going to show you what's been marked as PX-41. Can you see

1 that?

2 A. Yes, sir, I can.

3 Q. Can you identify for us what is PX-41?

4 A. This is the election code violation spreadsheet that I  
5 maintain as the supervisor of the Special Investigations Unit,  
6 and it contains the referrals that our office receives.

7 Q. And can you tell us what data that you input into this  
8 spreadsheet?

9 A. In this spreadsheet I input the county of the alleged  
10 violation, and then also the election involved, and then the  
11 Secretary of State's Office referral date, and then also the  
12 allegations that were made. I also, if the source is from a  
13 local DA or a local law enforcement officer or local elections  
14 administrator, I'll record that.

15 Q. And you update this how frequently?

16 A. Monthly.

17 Q. I'm going to show you what's been marked as Plaintiff's  
18 Exhibit 42. Can you tell the Court what this spreadsheet is,  
19 PX-42?

20 A. This is the spreadsheet that I maintain as the supervisor of  
21 the Special Investigations Unit, and it contains the  
22 prosecutions that the Attorney General's Office has either  
23 prosecuted or worked with a local district attorney or county  
24 attorney to prosecute.

25 JUDGE COLLYER: What is the title of this document at

1 the top?

2 THE WITNESS: The title says "Election Code Referrals  
3 of the Office of the Attorney General, Prosecutions Resolved."

4 JUDGE COLLYER: Thank you. And that's PX-42?

5 THE WITNESS: Yes, Your Honor.

6 JUDGE COLLYER: Thank you, sir.

7 BY MR. SWEETEN:

8 Q. And can you tell us just generally what's contained in this  
9 document?

10 A. This document is going to contain the county of the offense,  
11 the county where it was prosecuted, the name of the defendant,  
12 the allegations that were made in that election, the election  
13 involved, the cause number of the case, and then the charge that  
14 was filed by indictment, and then also the resolution date, the  
15 relevant statute under the Election Code or Penal Code, and then  
16 finally what the disposition of the case is.

17 Q. And I'll show you one more document --

18 JUDGE COLLYER: Mr. Sweeten, I'm sorry to interrupt  
19 you. Do you know how to operate that well enough to just blow  
20 up a little bit of that last exhibit?

21 MR. SWEETEN: No, I'm afraid I don't, but someone at my  
22 table can.

23 THE COURT: All lawyers need friends.

24 MR. HUGHES: Is that too close, Your Honor?

25 THE COURT: Oh, no, not for me.

1 MR. SWEETEN: Your Honor, I can give the court paper  
2 copies if the court wants it.

3 JUDGE COLLYER: No, I got it. I just actually wanted  
4 to see how it was because I couldn't see it. Thank you, sir.  
5 Thank you, Mr. Sweeten.

6 BY MR. SWEETEN:

7 Q. And I'm going to show you the third document, the last one,  
8 and I'll try to center it so Your Honor can see it. Okay. And  
9 there's the title of that document is "Election Code Referrals  
10 to the Office of Attorney General, Charges Pending Resolution."  
11 Can you tell the court briefly what this document shows?

12 JUDGE WILKINS: What is the exhibit number, sir?

13 MR. SWEETEN: It's PX-43.

14 A. Exhibit 43 represents the cases which are currently pending  
15 resolution. These are cases that have been indicted and are  
16 currently awaiting trial.

17 BY MR. SWEETEN:

18 Q. And these last two, PX-42 and 43, how often are they  
19 updated?

20 A. I maintain those or update those as there's some sort of  
21 resolution or disposition in the case.

22 Q. Now, after you receive the referral and enter it on your  
23 spreadsheet, what do you do after that?

24 A. Well, we evaluate the case and make sure that the criminal  
25 investigation is warranted, and then it would be approved -- or

1 it would be assigned to a member of the elections team to  
2 investigate.

3 Q. Now, is every case that's referred to SIU, is that  
4 investigated?

5 A. No, sir, there are certain circumstances where the cases  
6 aren't investigated. One example may be that the statute of  
7 limitations has expired; it could also be that it is not really  
8 a criminal offense; or it could be that it's a Class C  
9 misdemeanor, which is the lowest level of criminal offense in  
10 the State of Texas which is punishable by a fine only. Because  
11 we have a limited amount of resources, we wouldn't investigate  
12 those.

13 Q. When you refer an election violation for additional  
14 investigation, what do you do after that?

15 A. It would go to a member of the special investigations  
16 election team.

17 Q. And does SIU actually handle the prosecution of cases?

18 A. No, sir. Upon the completion of a criminal investigation  
19 where we believe that there's sufficient evidence to charge a  
20 case, we would refer that to the criminal prosecutions of the  
21 Office of Attorney General, or a local district or county  
22 attorney.

23 Q. Do your spreadsheets, PX-41 through 43, do they contain any  
24 entries related to cases that are investigated by county  
25 district attorneys or county attorneys?

1 A. If and only if the Special Investigations Unit or the  
2 criminal prosecutions division has been involved in the case.

3 Q. Does your spreadsheet contain federal investigations of  
4 election violations?

5 A. No, sir, we don't have information on federal prosecutions  
6 or investigations.

7 Q. All right. Now, in terms of referrals of election  
8 violations to SIU for investigation, how many have been  
9 referred?

10 A. Since approximately 2002, there have been 320 referrals made  
11 to the Office of the Attorney General.

12 Q. And of those 320 referrals, how many different Texas  
13 counties does that represent?

14 A. I believe it represents 97 of the 254 counties.

15 Q. Now, you talked about the referral process and sometimes you  
16 don't proceed with it. So let me ask you, of the 320 referrals,  
17 how many has the SIU actually investigated?

18 A. Since 2004, we've investigated a total of 186 cases.

19 Q. So of the 186 investigated cases that SIU has investigated,  
20 in general terms, the types of election code violations, what  
21 types of election code violations do those involve?

22 A. These could be illegal voting or other violations of the  
23 Texas Election Code or Penal Code offenses.

24 Q. Of the 186 cases, how many of those have been referred for  
25 prosecution?



1 A. 62.

2 Q. Of the 62 cases that have been referred to prosecution, how  
3 many have resulted in positive outcomes or convictions?

4 A. I believe that number is 50.

5 Q. One of the areas you described earlier is illegal voting,  
6 and I think one of those types is in-person voter fraud. So I  
7 want to ask you, of the 62 cases referred for prosecution, how  
8 many of those involved voter impersonation?

9 A. There are a total of six cases that involved voter  
10 impersonation that were prosecuted.

11 Q. And of the 62 cases referred for prosecution, how many  
12 involve in-person voter impersonation?

13 A. There have been five cases that have been sent for  
14 prosecution involving in-person voter impersonation.

15 Q. Does this tally include any referrals from the May  
16 primaries?

17 A. No, sir.

18 Q. Is there any case that you've investigated that comes to  
19 mind that involves in-person voter impersonation?

20 A. Yes, sir, there is a case.

21 Q. Can you tell the Court the general facts of that case?

22 A. This case involved the 2009 Progreso Independent School  
23 District election down in Hidalgo County and this case involved  
24 two brothers and their mother who went to the polling place.  
25 One brother -- I'm sorry, if I may clarify. One brother was

1 actually incarcerated in the state penitentiary in San Antonio;  
2 the other brother went to the polling place with the  
3 incarcerated brother's voter registration certificate and he  
4 presented himself as if he were his brother.

5 This was discovered by a poll worker inside the  
6 location, and she alerted the election judge. However, since  
7 the voter had a lawful voter registration certificate, the  
8 elections department let him proceed to vote.

9 Q. Now, were there -- other than the two -- other than the  
10 brother who attempted to vote on behalf of the other brother,  
11 was there another defendant involved in that case?

12 A. Yes, there was. The other defendant, Reyna Almanza, is the  
13 mother of the two sons, and she was actually present with  
14 Lorenzo Antonio Almanza, and she interjected with the election  
15 judge and vouched for the identity of her son who was using the  
16 impersonation -- the impersonated voter registration  
17 certificate.

18 Q. How was it that case was discovered and brought to the  
19 attention of the authorities?

20 A. The case was brought to light through the poll worker who  
21 was present at the polling place.

22 Q. And the poll worker, did she know both brothers?

23 A. Yes, she did. The poll worker actually went to high school  
24 with the incarcerated brother.

25 Q. As a supervisor or an investigator with SIU, you've worked

1 on cases involving voter impersonation at the polling place?

2 A. That's correct.

3 Q. From your experience, can you tell us how difficult it is to  
4 detect in-person voter impersonation at the polling place?

5 A. I would say it's very difficult to detect.

6 Q. Why is that?

7 A. Because it would require somebody at the polling place  
8 actually having personal knowledge of the voter who is  
9 presenting themselves as the impersonated voter, and then they  
10 would also additionally have to be able to observe how that  
11 person is checked in during the accepting a voter process.

12 Q. As compared to mail-in voting fraud, how difficult is  
13 in-person voter impersonation to detect or investigate?

14 MR. GEAR: Objection. Calls for speculation.

15 JUDGE COLLYER: I think that adds not quite  
16 speculation, given the witness' experience. I don't know that  
17 it has a whole lot of foundation, but that goes to weight, not  
18 admissibility, so we'll let him answer the question.

19 Go ahead, sir.

20 A. I believe in-person voter impersonation is more difficult to  
21 detect than mail-in ballot, for instance, voter impersonation.  
22 And it really deals with the amount of time that the suspect  
23 spends with the voters. In mail-in ballot cases, they spend a  
24 great deal of time with the voters, and use their mail-in  
25 ballots to cast the election. In voter impersonation cases

1       there's very little interaction with the witnesses, so  
2       frequently they're unable to identify the suspects through a  
3       conventional photo array.

4       BY MR. SWEETEN:

5       Q.   In addition to this case, have you -- are you aware of any  
6       other additional pending voter impersonation cases within the  
7       State of Texas?

8       A.   Pending criminal cases?

9       Q.   Yeah, currently.

10      A.   We have currently two pending criminal cases in the State of  
11      Texas right now with the Attorney General's Office that involve  
12      voter impersonation. One is the Mara Comparion (ph) case out of  
13      Bexar County, and then the second case is Lorenzo Antonio  
14      Almanza, the one in Hildago County.

15      Q.   Are you aware of any others that your office is not pursuing  
16      or investigating?

17      A.   No, I'm not aware.

18      Q.   Are you familiar --

19      A.   I apologize.

20      Q.   Okay.

21      A.   I am aware of another case that is being investigated by a  
22      local district attorney up in Tarrant County, where a mother had  
23      her son vote in an election.

24      Q.   Are you familiar with a voter ID bill at issue in this case,  
25      Senate Bill 14, just generally the terms?

1 A. Yes, I am.

2 Q. Does Senate Bill 14 increase the penalties for voter  
3 impersonation?

4 A. Yes, sir, it does. It affects all types of illegal voting,  
5 not just voter impersonation. It enhances the penalty for a  
6 criminal attempt from a Class A misdemeanor to a state jail  
7 felony, and then it also it enhances the actual offense of  
8 illegal voting from a third degree felony to a second degree  
9 felony. And that would apply to all four types of illegal  
10 voting.

11 Q. As a law enforcement officer, do you have an opinion whether  
12 requiring identification at the polling places will be helpful  
13 with your investigative efforts?

14 A. I do.

15 MR. GEAR: Objection.

16 THE COURT: Objection sustained. The witness' answer  
17 will be stricken.

18 MR. SWEETEN: I pass the witness. Thanks.

19 THE COURT: Thank you, Mr. Sweeten.

20 MR. GEAR: My name is Bruce Gear. I represent  
21 Eric Holder in this case.

22 CROSS-EXAMINATION

23 BY MR. GEAR:

24 Q. Major Mitchell, isn't it true that you did not testify  
25 before the legislature during the 2011 legislative session?

1 A. That is correct, I did not testify.

2 Q. During your direct testimony you identified five cases of  
3 voter impersonation, and I assume, that's five cases of voter  
4 impersonation at the polling place?

5 A. Yes, sir, there are five cases of in-person voter  
6 impersonation at the polling place.

7 Q. And then you identified a second -- or a sixth case, and I  
8 believe, you identified that as Tarrant County?

9 A. Well, sir, I identified a case that we were also involved in  
10 which was the Melvin K. Ponce (ph) investigation, which was a  
11 mail-in ballot voter impersonation.

12 Q. And the Melvin K. Ponce case, that would not have been  
13 covered by SB14 had it been in place. Isn't that correct?

14 A. Into what regard?

15 Q. In regards SB14 would not have stopped the Melvin K. Ponce  
16 case. Isn't that correct?

17 A. It could have had a deterrent effect.

18 Q. It's a by mail ballot case. Correct?

19 A. Yes, sir, it is.

20 Q. It is not a case where Melvin K. Ponce appeared in person  
21 and pretended to be someone else at the polling place. Correct?

22 A. Yes, sir, you are correct.

23 Q. And just so I'm clear, SB14, as it's drafted, deals  
24 specifically with voter impersonation at the polling place.  
25 Isn't that your understanding?

1 A. No, sir, it is drafted in that one of the portions of SB14  
2 deals with the offense of illegal voting, and there are four  
3 categories of that. And it enhances the penalty range for all  
4 four types of the offense.

5 Q. You had a deposition in this case. Correct?

6 A. Yes, sir.

7 Q. And we discussed Melvin K. Ponce. Correct?

8 A. Yes, sir, we did.

9 Q. And didn't I ask you the question whether or not SB14 would  
10 have prevented voter fraud in that case as it applies to SB14?

11 A. For the purposes of the voter ID requirement at a polling  
12 place, that case would not have -- it would not have prevented  
13 it.

14 Q. Now, the other case that you spoke about was Reyna Almanza.  
15 Is that correct?

16 A. Yes, sir.

17 Q. And isn't it true that Reyna Almanza did not cast a ballot  
18 during the 2009 school district election?

19 A. I do not believe that Reyna Almanza cast a ballot in that  
20 election.

21 Q. The second case that you talked about was Lorenzo Antonio  
22 Almanza. Correct?

23 A. Yes, sir.

24 Q. Isn't it true that there's no conviction in this case?

25 A. Yes, sir, that case is currently pending.

1 Q. The third case that you talked about was Delores McMillan.  
2 Or you didn't actually identify that, but do you understand  
3 Delores McMillan as being one of the voter impersonation cases  
4 that you've identified here today?

5 A. Yes, sir, it is one of the five.

6 Q. And Delores Millan (sic) was an election worker. Correct?

7 A. Yes, sir, she was an election worker in the 2010 primary  
8 elections in Dallas County.

9 Q. Now, the election code violation that you're referencing  
10 regarding Delores McMillan was one that occurred before the  
11 polling place even opened. Isn't that accurate?

12 A. Yes, sir, that is my understanding of the case facts.

13 Q. This is not a case where she presented an identification to  
14 someone and pretended to be someone else. Isn't that accurate?

15 A. That's correct.

16 Q. SB14 would not have prevented the case of Delores McMillan  
17 because it occurred before the polls opened. Isn't that  
18 correct?

19 A. Again, I believe there could have been a deterrent effect  
20 based upon the statute, but it would not have prevented her from  
21 doing so.

22 Q. And you also mentioned, and I believe you mentioned her by  
23 name, but I'm going to use the initials M.C. If I do that,  
24 would you understand who I'm talking about?

25 A. Yes, sir, I would.



1 Q. And there's no conviction in the M.C. case, is there?

2 A. No, that case is currently pending as well, sir.

3 Q. And M.C. has been found mentally incompetent. Isn't that  
4 correct?

5 A. I believe so, yes, sir.

6 Q. And under the charge of voter impersonation, there would  
7 need to be a finding of intent, that that person intended to  
8 violate the law. Isn't that correct?

9 A. The elements of the offense, I believe, are intentionally or  
10 knowingly.

11 Q. And then finally, the last case that you mentioned was --  
12 and actually didn't mention it by name, but Jack Crowder, III.  
13 Would that be one of the voter impersonation cases that you're  
14 identifying here today for the judges?

15 A. Yes, sir, that is Jack Carol Crowder and that was the 2008  
16 general elections in Harris County, Houston, Texas.

17 Q. Now, the allegation for the Jack Carol Crowder case is that  
18 he voted on behalf of his deceased father. Is that accurate?

19 A. Yes, sir, he presented his deceased father's voter  
20 registration certificate and cast a ballot in that election.

21 Q. And how do you know he presented his father's voter  
22 registration card?

23 A. I believe he told me that, and he provided the voter  
24 registration certificate to us during an interview.

25 Q. Again, you had a deposition in this case. Correct?

1 A. Yes, sir.

2 Q. And you believe it's important to tell the truth, or you did  
3 tell the truth during your deposition. Correct?

4 A. Yes, sir, I did.

5 Q. And during the deposition didn't you tell me that you  
6 learned that information by looking at the indictment papers,  
7 that it would be included in the indictment papers that he used  
8 his father's voter registration card?

9 A. You could find -- yes, I believe I did say that.

10 MR. GEAR: Permission to hand something to the other  
11 counsel.

12 THE COURT: Yes, go right ahead. Thank you, sir.

13 MR. GEAR: Could you present Exhibit 240, please?

14 JUDGE WILKINS: Whose Exhibit 240?

15 MR. GEAR: It's DE 240.

16 BY MR. GEAR:

17 Q. I'll give you a chance to look at this document before I ask  
18 you any questions.

19 A. Yes, sir.

20 Q. Is this the indictment document that you were referring to  
21 regarding Jack Carol Crowder?

22 A. Yes, sir, I believe it is.

23 MR. GEAR: Could you pull up the last paragraph,  
24 please.

25

1 BY MR. GEAR:

2 Q. I would ask you to take a look at the paragraph that's been  
3 called up and tell me if you see anywhere in that paragraph that  
4 he used his father's voter registration card to vote?

5 A. No, sir, I don't see it in there.

6 Q. So you could be incorrect on that point. Right?

7 A. As far as my deposition, I was incorrect. I said that I  
8 thought the one place it may be would be in the indictment.

9 Q. But it's your testimony today that he told you that?

10 A. It is my testimony today that we interviewed Jack Carol  
11 Crowder during this investigation, and Jack Carol Crowder  
12 advised us that he --

13 Q. Can you -- I'm sorry. Were you done?

14 MR. SWEETEN: Your Honor, the witness wasn't finished  
15 responding to --

16 THE COURT: He's letting him finish, I promise,  
17 Mr. Sweeten.

18 A. Yes, sir, during the investigation, he advised us that he  
19 used his father's voter registration certificate and he gave it  
20 to us.

21 BY MR. GEAR:

22 Q. Now, you've referenced your spreadsheet, which is  
23 Exhibit 41, I believe?

24 A. 41, 42, and 43.

25 Q. That information is not contained anywhere within your

1 spreadsheet, is it?

2 A. No, sir.

3 Q. During your direct testimony you also talked about  
4 noncitizen voting. Do you recall that?

5 A. In today's?

6 Q. Yes.

7 A. I don't believe I've discussed noncitizens voting today.

8 Q. Let me ask you this question: Based on the referrals to the  
9 Office of the Attorney General, between 2002 and 2012, how many  
10 cases of noncitizen voting can you identify?

11 A. I can think of a few, probably three or four.

12 Q. During your deposition did you indicate that you had three  
13 that you could call to mind?

14 A. That seems correct.

15 Q. In discussing specifically those three cases, the first case  
16 would be Debra Briseno, which was a 2006 primary election.  
17 Isn't that correct?

18 A. Yes, sir, Debra Briseno was a defendant that was charged as  
19 a result of elections misconduct in the 2008 primary election.

20 Q. And she was a voter registrar during that election, wasn't  
21 she?

22 A. Yes, sir. She was a city councilperson for the City of  
23 Port Lavaca, and had signed up as a deputy voter registrar for  
24 the 2008 primary.

25 Q. And that case did not result in any charges to noncitizens.

1       Isn't that accurate?

2       A. No, sir, no noncitizens were charged in that criminal  
3       investigation.

4       Q. The second case that, I believe, you have in mind is the  
5       2008 Hidalgo County election. Is that accurate?

6       A. I believe so, yes.

7       Q. And you don't actually know the facts of that case, do you,  
8       all of the facts?

9       A. I'm not aware of all of the facts because our office only  
10      assisted in a portion of the investigation that was conducted by  
11      the local district attorney's office.

12      Q. And as you sit here today, you can not testify before the  
13      court that there were any noncitizens charged in that case, can  
14      you?

15      A. No, sir.

16      Q. The third case, and I believe this is the final case that  
17      you are able to identify, is the 2010 Dallas County election.  
18      Isn't that right?

19      A. That is correct, sir. That was the 2010 primary election in  
20      Dallas, Dallas County.

21      Q. And that case involved by-mail ballot fraud. Correct?

22      A. That case involved a number of allegations, I think, maybe  
23      10 allegations of different types. One of the allegations was  
24      mail-in ballot fraud; others were illegal voting.

25      Q. Well, it's true, is it not, that there were no noncitizens

1 charged in the 2010 Dallas County election?

2 A. That is correct. There were no charges of noncitizen  
3 illegal voting.

4 Q. And you have no knowledge of any other cases where  
5 noncitizens were alleged to have voted. Isn't that correct?

6 A. I really only know the cases that are referred to our  
7 office.

8 JUDGE COLLYER: But the answer to the question is no,  
9 you know of none?

10 THE WITNESS: Yes, Your Honor, I don't know of any  
11 others.

12 JUDGE COLLYER: No, you don't know of any involving  
13 noncitizen illegal voting?

14 THE WITNESS: Yes, Your Honor, I do not know of any  
15 others involving noncitizen U.S. -- or noncitizens voting.

16 JUDGE COLLYER: Let me back up. The 2010 Dallas  
17 primary, you just said that didn't include any charge of  
18 noncitizen voting. Right?

19 THE WITNESS: That is correct, Your Honor.

20 JUDGE COLLYER: And the 2008 Hidalgo County election,  
21 you said you can't say that there was any noncitizen voting in  
22 that case?

23 THE WITNESS: That's correct, Your Honor.

24 JUDGE COLLYER: And the voter registrar case involving  
25 somebody named Briseno, that didn't include any charge about

1 noncitizens?

2 THE WITNESS: No, noncitizens were charged in that  
3 case.

4 JUDGE COLLYER: Okay. So those are the three cases I  
5 thought you identified during your deposition as possibly  
6 involving noncitizens.

7 THE WITNESS: Yes, Your Honor.

8 JUDGE COLLYER: Are there others?

9 THE WITNESS: There are others that we conducted  
10 investigations, but the allegations were unsubstantiated.

11 JUDGE COLLYER: Okay. So there are no noncitizen  
12 voting cases in which the allegations were substantiated?

13 THE WITNESS: If I may, Your Honor, in the Dallas 2010  
14 case, and in the Hidalgo County case -- I'm sorry, the  
15 Calhoun County case involving deputy voter registrar, it was  
16 determined that noncitizens had voted in those elections;  
17 however, they lacked the *mens rea*, the intentionally or  
18 knowingly, for them to be criminally charged.

19 JUDGE COLLYER: Okay. Go ahead.

20 BY MR. GEAR:

21 Q. So to sum that up, as far as the Attorney General's Office  
22 is concerned of Texas, there's been no cases where noncitizen  
23 voters have been charged for voter impersonation. Isn't that  
24 accurate?

25 A. Yes, sir.

1 Q. Now, the Attorney General's Office for Texas has had  
2 jurisdiction over Election Code violations since --

3 JUDGE WILKINS: I'm sorry, I need to interrupt for a  
4 second. When you said that there was a lack of *mens rea* and so  
5 there were no charges brought, what did you mean by "a lack of  
6 *mens rea*"?

7 THE WITNESS: The noncitizens in this case were  
8 approached by deputy voter registrars and told that if they had  
9 a driver's license, that they were eligible to vote in an  
10 election. And these deputy voter registrars, for the purposes  
11 of Texas law, are considered public servants. So the voters  
12 were unaware that they were not eligible to vote in the election  
13 as defined in the illegal voting statute.

14 JUDGE WILKINS: So they did not intend to break the  
15 law, is what you're saying?

16 THE WITNESS: Yes, Your Honor.

17 JUDGE WILKINS: All right. Thank you.

18 BY MR. GEAR:

19 Q. Are you aware of whether or not the noncitizens that were --  
20 the allegations of noncitizens in those cases, are you aware of  
21 whether or not those noncitizens had driver's licenses?

22 A. I can say in the Debra Briseno case, I believe they did have  
23 Texas driver's licenses. I'm not certain about the Dallas case.

24 Q. So the previous question I asked, and I'm sorry, I didn't  
25 hear the answer, the Office of the Attorney General had



1 jurisdiction, or has jurisdiction, and has had jurisdiction over  
2 Election Code violations since 1985. Correct?

3 A. Yes, sir, I believe the Office of the Attorney General has  
4 that concurrent jurisdiction with local prosecutors for quite  
5 some time.

6 Q. And the Office of the Attorney General has made  
7 Election Code violations a priority of the office. Isn't that  
8 correct?

9 A. Yes, sir, it is a priority amongst many.

10 Q. And isn't it a fact that pursuant to Texas Election Code  
11 annotated 273.001, local prosecutors and DA's are required to  
12 deliver notice to the Secretary of State within 30 days of  
13 beginning an Election Code investigation? Isn't it true?

14 A. I believe that's correct.

15 Q. And that notice also requires that they include the date on  
16 which the election was held. Isn't that also true?

17 A. I would have to look at the statute to be absolutely  
18 certain.

19 Q. You were asked about the referral system, but isn't it, in  
20 fact, true that the Office of the Attorney General has the  
21 authority to investigate an Election Code on their own  
22 initiative?

23 A. Yes, sir, if we have reason to believe an offense occurred.  
24 However, our policy, we restrict ourselves to just referrals.

25 Q. And they have the authority to do that even without a

1 referral if they believe a violation has occurred. Isn't that  
2 correct?

3 A. We have the legal authority under Chapter 273 to do so, yes,  
4 sir.

5 Q. Pursuant to Texas Election Code annotated 273.001, again,  
6 the Office of the Attorney General has the authority to direct  
7 county and district attorneys to conduct or assist the Office of  
8 the Attorney General in investigations. Isn't that correct?

9 A. I believe that's the statute, yes, sir.

10 Q. The Office of the Attorney General even has the authority to  
11 direct the Department of Public Safety to conduct investigations  
12 if they so choose. Isn't that correct?

13 A. Yes, sir, I believe, that's accurate.

14 Q. You indicated during your direct that voter impersonation at  
15 the polls is difficult to detect. Do you recall that testimony?

16 A. Yes, sir, I do.

17 Q. Voter impersonation is similar to any other crime, in that  
18 it involves proof beyond a reasonable doubt. Correct?

19 A. Yes, sir.

20 Q. You would agree that anyone at the polling place has the  
21 ability to detect in-person voter impersonation. Correct?

22 A. I'm sorry, could you ask the question again?

23 Q. There are a lot of people in the polling place on election  
24 day generally. Correct?

25 A. No, sir, there's a restricted number. Only the voters

1 representing themselves to vote, and then also the poll workers  
2 who are present during that election.

3 Q. Let me rephrase that question for you. There are poll  
4 workers?

5 A. Yes, sir.

6 Q. Poll watchers?

7 A. Yes, sir.

8 Q. Voters?

9 A. Yes, sir.

10 Q. And there's any other host of individuals that may come and  
11 go from the polling place at any given time. Correct?

12 A. Yes, sir.

13 Q. And so my question to you was: Any of those individuals  
14 have the ability to detect in-person voter impersonation.  
15 Correct?

16 A. I think I said in my deposition and also here today that I  
17 think the only way it will be detected is if the person actually  
18 has a personal relationship and knows the voter who is  
19 presenting the false documents.

20 Q. Well, in fact, one of the voter impersonation cases that you  
21 have before the Office of the Attorney General was detected by a  
22 DPS trooper who was not in the polling place at the time.  
23 Correct?

24 A. Yes, sir, it was detected sometimes afterwards.

25 Q. And there's also another in-person voter impersonation case

1 that was detected by a citizen group who was not necessarily in  
2 the polling place at the time. Correct?

3 A. Yes, sir, it was.

4 Q. And regarding the evidence in a polling place, isn't it a  
5 fact that by statutory law, the Office of the Attorney General  
6 has the ability to impound evidence following an election?

7 A. Yes, sir. The Texas Attorney General's Office or local  
8 district or county attorney may request from a district judge in  
9 state court the ability to impound election records.

10 Q. And I also want to ask you, isn't it a fact that the Office  
11 of the Attorney General has a long-standing policy of working  
12 with local law enforcement, district attorneys, and county  
13 attorneys, in investigating Election Code violations?

14 A. We try to work with local law enforcement and local  
15 prosecutors on all types of cases, including election cases.

16 Q. And you often work in conjunction with local attorneys and  
17 DA's in investigating and sometimes prosecuting Election Code  
18 violations. Isn't that correct?

19 A. Yes, sir. The Jack Carol Crowder is an example of that  
20 case. That was actually prosecuted with the assistance of the  
21 Harris County District Attorney's Office.

22 Q. So the answer to that was yes?

23 A. Yes, sir.

24 MR. GEAR: If I could have one moment, please.

25 JUDGE COLLYER: Yes, sir.

1 BY MR. GEAR:

2 Q. Isn't it true that the criminal charges or the criminal  
3 portion of SB14 has already been precleared and is currently in  
4 effect?

5 A. I don't know that, sir.

6 Q. Would you agree that the current laws as they're in place  
7 act as a deterrent in preventing in-person voter impersonation?

8 MR. SWEETEN: Objection, Your Honor. Outside the  
9 scope, and the court didn't allow me to ask this question.

10 JUDGE COLLYER: Yeah, I think more the latter, but I  
11 think this witness can't make that conclusion.

12 MR. GEAR: I have nothing further.

13 JUDGE COLLYER: Thank you very much, Mr. Gear. Oh I'm  
14 sorry, sir, go right ahead.

15 MR. ROSENBERG: Thank you. I'll be very quick.  
16 Ezra Rosenberg for the intervenor defendants.

17 BY MR. ROSENBERG:

18 Q. Major Mitchell, nice to see you again.

19 A. Yes, sir.

20 Q. Very quickly, you started out -- in response to  
21 Mr. Sweeten's questions you said there were six cases of voter  
22 impersonation. But just to make sure we all know what we're  
23 talking about, one was Ponce, which was an absentee ballot case.  
24 Right?

25 A. That is correct, sir.

1 Q. One of them was Ms. Almanza, the mother who, herself, didn't  
2 try to impersonate anyone. Right?

3 A. No, sir, she was charged as a party to the offense of  
4 illegal voter.

5 Q. Right. But that's one of your five?

6 A. Yes, sir.

7 Q. But she, herself, didn't try to impersonate anyone. She  
8 aided and abetted, allegedly, her son. Is that correct?

9 A. Well, she's been convicted of that, yes, sir.

10 Q. But again, so we're really dealing with four allegations of  
11 individual people who went to a polling booth, supposedly - I'll  
12 get to two more - and tried to impersonate someone else, not  
13 five. Isn't that correct? Because Mrs. Almanza didn't do that?

14 A. That's correct.

15 Q. Then of the four, we have Ms. McMillan, who was the election  
16 worker herself, who kind of cooked the books before the polls  
17 opened. Right?

18 A. Yes, sir, that's correct.

19 Q. So then we're down to three. And the other one, M.C., we've  
20 been calling her, is a woman who has been declared mentally  
21 incompetent and used photo IDs that she had to identify herself  
22 at the polling place. So she didn't try to impersonate anyone  
23 but herself. Right?

24 A. She used multiple identities, including her deceased sister.

25 Q. But they were all photo IDs with her photo on it. Correct?

1 A. I'm not sure which type of document she used at the polling  
2 place. She had driver's license and she also had voter  
3 registration certificates and all the different identities.

4 Q. But sitting here today, you can't say one way or the other.

5 A. No, sir.

6 Q. Then we're down to two, Crowder and Mr. Almanza. Correct?

7 A. Yes, sir.

8 Q. And that's over 10 years from 2002 to 2011, two people whom  
9 you're saying might have been prevented from impersonating  
10 someone else by SB14's photo ID requirements. Right?

11 A. These are two cases of the cases that have been referred to  
12 our office.

13 Q. And those are the only ones you know of that you've  
14 testified to. Is that correct?

15 A. With the exception of the case I've become aware of in  
16 Tarrant County.

17 Q. I understand. The one you read about in the newspaper.  
18 Correct?

19 A. Yes, sir.

20 Q. Then prior to 2002, you're not aware of any others. Isn't  
21 that correct?

22 A. That's correct, sir.

23 Q. And just because a crime is difficult to detect doesn't  
24 necessarily mean people are committing it. Isn't that correct?

25 A. I'm sorry, could you state that one more time?

1 Q. Sure. Just because a crime may be difficult to detect  
2 doesn't necessarily mean that people are committing it. Isn't  
3 that correct?

4 A. I would agree.

5 Q. And in fact, in-person voter impersonation in the polling  
6 booth is a crime that, by definition, is committed in broad  
7 daylight in front of people. Right?

8 A. In-person voter impersonation would be in front of somebody,  
9 that's correct.

10 Q. And in fact, it's committed, if committed at all, in front  
11 of people who are looking out for that kind of thing, isn't it?

12 A. Well, I don't know if I would agree with that statement  
13 completely.

14 Q. Well, poll watchers, election workers, aren't they supposed  
15 to be looking out for that sort of thing?

16 A. The job of a poll worker who is accepting voters is to  
17 verify the voter's eligibility to vote in an election. They do  
18 not have the ability to verify their identity. An example would  
19 be if someone came into the polling place with a bank statement,  
20 which is currently authorized under Texas law.

21 Q. But in fact, you've already talked about at least one of  
22 your cases that was, in fact, spotted by a poll worker. Wasn't  
23 that so?

24 A. That is correct, sir.

25 MR. ROSENBERG: I have no further questions. Thank



1       you.

2               JUDGE COLLYER: Thank you, sir. Is there any redirect?

3               MR. SWEETEN: Yes, Your Honor, short redirect.

4                               **REDIRECT EXAMINATION**

5       BY MR. SWEETEN:

6       Q. Of all the types of voter fraud that you investigate as an  
7       investigator, which is the most difficult to detect?

8       A. I would think in-person voter impersonation.

9       Q. With respect to the Almanza case, can you tell us who has  
10       been charged in that fact pattern that you described earlier in  
11       your testimony?

12       A. Both Lorenzo Almanza and Reyna Almanza were charged with  
13       illegal voter impersonation, and then Reyna Almanza has been  
14       convicted by Brooks County court for illegal voting, voting  
15       impersonation.

16       Q. And the other case is pending. Is that correct?

17       A. Yes, sir.

18               MR. SWEETEN: No further questions.

19               JUDGE COLLYER: Well, all right, then, you are excused.  
20       Thank you very much, Major.

21               MR. FREDERICK: Matthew Frederick for the State of  
22       Texas. The State calls Senator Thomas Williams.

23                               (Oath administered by Courtroom Clerk.)

24       **(SENATOR THOMAS WILLIAMS, PLAINTIFF witness, having been duly**  
25                               **sworn, testified as follows:)**